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IN THE

Supreme Court of the United States

October Term, 1982

CRAIG POLLARD and HENRY MEADOWS,
Petitioners,
v
THE CITY OF DETROIT; THE DETROIT POLICE DEPARTMENT; WILLIAM L. HART a/k/a CHIEF OF POLICE; GEORGE BENNETT a/k/a DEPUTY CHIEF OF POLICE and PHILLIP TANNIAN a/k/a FORMER CHIEF OF POLICE,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I

WHETHER THE RESPONDENT CITY, CONSISTENT WITH PROCEDURAL DUE PROCESS OF LAW UNDER THE 14TH AMENDMENT, CAN SUMMARILY DISCHARGE PETITIONERS, EFFECTIVE RETROACTIVE TO SEVENTEEN MONTHS PRIOR TO THE TIME PETITIONERS FIRST RECEIVED NOTICE OF THE CHARGES FORMING THE BASIS OF THE SUMMARY DISMISSAL ACTION.

II

WHETHER THE RESPONDENT CITY CAN SUMMARILY DISCHARGE PETITIONERS, CONSISTENT WITH PROCEDURAL DUE PROCESS OF LAW, BASED ON CHARGES STEMMING FROM ALLEGED INCIDENTS OCCURRING MORE THAN *TWO* (2) YEARS PRIOR TO NOTIFYING THEM OF THE NATURE AND SUBSTANCE OF THOSE CHARGES AND THE PROPOSED DEPARTMENTAL ACTION.

III

WHETHER THE NOTICE OF SUSPENSION, AND THE REASON THEREFORE, RECEIVED BY PETITIONERS ON MAY 24, 1973, WAS REASONABLY CALCULATED TO GIVE THEM SUFFICIENT AND TIMELY NOTICE OF THE NEW DEPARTMENTAL CHARGES FILED AGAINST THEM SEVENTEEN MONTHS LATER ON OCTOBER 18, 1974, THEREBY COMPORTING WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

IV

WHETHER THE TRIAL COURT AND APPELLATE COURT ERRED IN FAILING TO CONSIDER PETITIONERS' ALLEGED CLAIM OF A DENIAL OF PROCEDURAL DUE PROCESS WHERE THE RESPONDENT CITY FAILED TO FOLLOW ITS OWN DULY PROMULGATED RULES, REGULATIONS AND LAWS TO EFFECT THEIR TERMINATION OF EMPLOYMENT.

V

WHETHER PETITIONERS ARE DEEMED TO HAVE WAIVED ALL CLAIMS OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS VIOLATIONS UNDER THE CONSTITUTION AGAINST THE RESPONDENT CITY WHERE THEIR UNION REPRESENTATIVES REFUSED TO BRING THEIR CASES BACK BEFORE A PANEL OF ARBITRATORS FOR RE-CONSIDERATION OF THEIR DISCHARGE UNDER THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT.

VI

WHETHER THE FIRST EVIDENTIARY HEARING GRANTED PETITIONERS COMMENCING *TWO YEARS* AFTER THEIR SUSPENSION FROM EMPLOYMENT, BASED ON NEW CHARGES, WAS A TIMELY AND MEANINGFUL HEARING COMPORTING WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

VII

WHETHER, AS ALLEGED IN PETITIONERS' COMPLAINT, PETITIONERS' CIVIL RIGHTS PURSUANT TO 42 USC 1983 WERE VIOLATED BY THE RESPONDENT CHIEF OF POLICE WHEN HE SUMMARILY DISCHARGED THEM ON OCTOBER 28, 1974, RETROACTIVE TO MAY 24, 1973, SEVENTEEN (17) MONTHS PRIOR THERETO, WHEN HE HAD NO AUTHORITY AND WHEN THE CITY CHARTER SPECIFICALLY PROHIBITED SUMMARY DISMISSALS IN SUCH CASES.

VII.

WHETHER PETITIONERS HAVE ALLEGED SUFFICIENT FACTS TO SUPPORT THEIR CLAIM THAT THEIR "LIBERTY INTEREST" WERE VIOLATED BY THE RESPONDENTS THROUGH THE POLICE DEPARTMENT'S WRONGFUL DISSEMINATION OF FALSE INFORMATION REGARDING PETITIONERS' TERMINATION FROM EMPLOYMENT, I.E. THAT PETITIONERS WERE DISCHARGED FOR CRIMINAL WRONGDOING WHEN IN FACT THEY HAD BEEN EXONERATED IN A COURT OF LAW OF ANY AND ALL CRIMINAL WRONGDOING PRIOR TO AN EVIDENTIARY HEARING THEREBY ADVERSELY AFFECTING PETITIONERS' OTHER EMPLOYMENT OPPORTUNITIES.

IX

WHETHER SAID DISSEMINATION OF FALSE AND DEROGATORY INFORMATION PRIOR TO AN EVIDENTIARY HEARING, VIS A VIS THE TRIAL BOARD HEARING, DENIED PETITIONERS THEIR "LIBERTY INTEREST," THEIR RIGHT TO THEIR GOOD NAME AND REPUTATION, AND TO SEEK OTHER EMPLOYMENT OPPORTUNITIES WITHOUT DUE PROCESS OF LAW.

X

WHETHER RESPONDENT CITY OF DETROIT IS LIABLE UNDER 42 USC § 1983 FOR THE ALLEGED ACTIONS OF ITS POLICE DEPARTMENT AND THE INDIVIDUALLY NAMED RESPONDENTS WHERE SAID INDIVIDUALS WERE ACTING PURSUANT TO POLICIES AND CUSTOMS ADOPTED OR ACQUIESCED TO BY SAID RESPONDENT CITY.

XI

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XV

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XVI

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XVII

WHETHER THE TRIAL AND APPELLATE COURTS, IN CONSIDERING PETITIONERS' COMPLAINT CONSTRUED THE PETITIONERS' PLEADINGS IN THE LIGHT MOST FAVORABLE TO PETITIONERS IN DETERMINING WHETHER THE JUDGMENT OF DISMISSAL UNDER FRCP 12(b)6 WAS APPROPRIATELY GRANTED TO DEFENDANTS.

XVIII

WHETHER THE RESPONDENT CITY WAS REQUIRED, UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION, TO REINSTATE PETITIONERS TO THEIR FORMER POSITION AFTER THE INITIAL BASIS OF THE SUSPENSION NO LONGER EXISTED.

XIX

WHETHER PETITIONERS WERE REQUIRED TO EXHAUST THEIR ADMINISTRATIVE/CONTRACTUAL REMEDIES PRIOR TO COMMENCING LITIGATION ALLEGING A VIOLATION OF THEIR UNITED STATES CONSTITUTIONAL AND CIVIL RIGHTS.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners, Craig Pollard and Henry Meadows, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 17, 1982 and its order denying petitioners' Petition for Rehearing En Banc entered on April 27, 1982.

OPINION BELOW

The Opinion/Order of the Court of Appeals appears in the Appendix hereto. The Opinion of the District Court for the Eastern District of Michigan was rendered orally from the bench on February 26, 1980 by the Honorable Charles W. Joiner and a transcript of that Opinion appears in the Appendix hereto.

JURISDICTION

The Order denying petitioners' Petition for Rehearing was entered on April 27, 1982, and this Petition for Writ of Certiorari was filed within ninety (90) days of that date. The Court's jurisdiction is invoked under 28 USC § 1254 (1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Code, Title 42:

§ 1983

"Every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

United States Code, Title 42:

§ 1985 (3)

"If two or more persons in any state or territory conspire to go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any persons or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done any act in furtherance of the object of such conspiracy, whereby another is injured in his personal property, or deprived of having and exercising any right or privilege of a citizen of the united States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

United States Constitution, Amendment Fourteen

Section 1

". . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Jurisdiction of the District Court was invoked pursuant to Title 28 USC § 1331 (a) and 1343.

Petitioners Craig Pollard and Henry Meadows are former police officers of the respondent City of Detroit.

On May 24, 1973 petitioners were given notification of suspension by the Detroit Police Department for the reason that "Officers were officially indicted by the Wayne County Citizens Grand Jury." The suspension resulted in both petitioners being relieved of their responsibilities as police officers and at the same time resulted in their losing all pay and fringe benefits to which they were entitled. It is important to note that at the time of the suspension, petitioners were not charged departmentally by the Detroit Police Department. In other words, no specific charges pursuant to the Department's rules and regulations appeared on the face of the notice of suspension.

Further, although requested by petitioners and mandated by law and contract, no hearings on the suspensions were conducted prior to the loss of pay, fringe benefits and other entitlements. Petitioners were subsequently tried by a jury of their peers in the Recorder's Court for the City of Detroit, and acquitted of all charges in September, 1974 which formed the basis of the indictments causing their initial suspension from the Detroit Police Department.

Although acquitted of all charges brought about by the Wayne County Citizens Grand Jury indictments, the Detroit Police Department failed to revoke petitioners' suspension. There was no apparent reason for not reinstating petitioners as they were highly rated police officers and had received numerous commendations for their performances in the line of duty and there were no charges either criminally or departmentally pending against them.

Instead, on or about October 18, 1974, approximately 18 months after the initial suspensiion, petitioners for the first time were charged by the Detroit Police Department with allegedly violating Departmental rules and regulations. It is noteworthy that those charges were based on alleged incidents occurring approximately two years prior to the petitioners' being charged departmentally. A notice of hearing was also included in those charges indicating that a "chief's hearing" would be held on the charges before then Chief of Police, Respondent Phillip G. Tannian, on October 28, 1974.

At the "Chief's hearing" the charges were read to petitioners, each entered a plea of not guilty on all charges. No evidence was offered against them at the hearing. Numerous objections were placed on the record by petitioners and their attorney from the Detroit Police Officers' Association concerning the timeliness and vagueness of charges and other defects in the proceedings. The Chief then summarily discharged both petitioners whereupon they immediately appealed to the Police Trial Board for review of their discharges.

Petitioners, after having made numerous requests to the Board of Police Commissioners in March and April, 1975, were finally granted an evidentiary hearing before a police Trial Board in May, 1975 eight (8) months after their summary termination by the Chief of Police, and two (2) years after they were first suspended.

The Trial Board Panel adjudicating petitioners cases consisted of three officials one of whom was respondent

William Hart, Chief of Police who was appointed Chief while still considering, as a Trial Board member, the previous Chief's decision. One other member of the Trial Board was inspector Richard Dungy, who took an active part in investigating petitioners' cases leading up to their discharge. By action of the Trial Board, the petitioners' discharges were sustained.

Petitioners immediately appealed for a hearing before a panel of arbitrators which rendered its decision on June 30, 1976 setting aside all charges except one against petitioner Meadows and two against petitioner Pollard for "procedural defects of a fundamental nature." (App. A-78) The matter was remanded back to the police Trial Board for reconsideration of the penalty of discharge. Petitioners' discharges were again sustained in December, 1976 by action of the Police Trial Board.

In January, 1977, petitioners sought through their union representative to again appeal this final Trial Board decision, but with no success as their union determined that it had done all that it could on their behalf and that any further proceedings would be unavailing.

Petitioners subsequently filed an action on October 24, 1978 in the United States District Court, Eastern District of Michigan, Southern Division, alleging violations of their civil rights under Title 42 USC, § 1983 and § 1985 (3); violation of their Constitutional rights under the United States Constitution, Fourteenth Amendment; Michigan Constitution, Articles 1 and 2, and further alleging wrongful discharge, breach of employment contract and defamation under the common law of the State of Michigan. (App. A-4)

Subsequently, on November 14, 1979, the Respondents filed a Motion To Dismiss and/or for Summary Judgment.

Petitioners began this appellate action from a decision by the Honorable Charles W. Joiner of the Federal District Court, Eastern District of Michigan, Southern Division, granting the Respondents' motion to dismiss. The decision was reflected in his opinion and order dated January 16, 1980 (App. A-67) dismissing Petitioners' complaint and in his order dated March 16, 1980 (App. A-69), denying petitioners' motion to amend their complaint and further dismissing all federal claims alleged in their complaint with prejudice in addition to all remaining state claims. A judgment reflecting the order of March 16, 1980 was entered by the Court on March 26, 1980. (App. A-70)

Subsequent to the January 16, 1980 order, on January 28, 1980, Petitioners filed a motion for order allowing them to amend their second amended complaint and at the same time filed the proposed third amended complaint. (App. A-54)

The Court after consideration of Petitioners' request to amend their complaint denied their motion for the reason that the proposed third amended complaint was insufficient as it failed to state a claim upon which relief could be granted under Rule 12(b)6 of the Federal Rules of Civil Procedure. As a result of Judge Joiner's decision, all relief was denied under federal law with the remaining state law elements of Petitioners' case dismissed for lack of jurisdiction.

A Notice of Appeal was filed on April 22, 1980 by petitioners in the District Court preserving their appeal to the United States Court of Appeals, Sixth Circuit.

Oral argument was held before the Court of Appeals on February 9, 1982 with its decision and order entered and issued on February 17, 1982 affirming the District Court's Judgment. Petitioners then filed a Petition for Rehearing En Banc which was denied by the Court of Appeals on April 27, 1982.

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW SUBSTANTIALLY CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPREME COURT AS TO THE APPLICABILITY OF THE DUE PROCESS CLAUSE UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AS IT RELATES TO TERMINATION PROCEDURES EMPLOYED BY STATES AND THEIR POLITICAL SUBDIVISIONS IN SUSPENDING AND/OR DISCHARGING PUBLIC EMPLOYEES.

The United States Constitution, Amendment Fourteen, Section 1, states in pertinent part as follows:

> ". . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis Added)

This concept of due process of law has applicability to the procedures employed by a state in effecting a deprivation of an individual's life, liberty or property. In

addition the substantive matters brought under consideration by a state, in those proceedings, are also subject to certain due process requirements under the 14th Amendment.

Due process of law has been defined in numerous cases in various courts throughout this system of jurisprudence, the clause in question means that there can be no proceeding against life, liberty or property which may result in the deprivation of either without the observance of those general rules established in our system of jurisprudence for the security of private rights. *Cf., Hagar* v *Reclamation Dist. No. 108*, 4 S Ct 663; 11 US 708 (1884) "Due process is a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial." (Emphasis added) *Sexton* v *Barry*, 233 F2d 220 (1956).

This Court in prior decisions has sought to define, on a case by case basis, the practical meaning and application of the due process clause under the 14th Amendment. In the case of *Board of Regents* v *Roth*, 408 US 564; 925 S Ct 2701 (1972) this Court, considering prior decisions falling under this section of the constitution held that in order for state action to be proscribed by the 14th Amendment it must infringe on an individual's "property interest" or "liberty interest" as defined with reference to state law. Further, that if intended state action has the potential to cause an infringement on such an individual's interest, certain due process requirements must be met prior to action being taken.

It has been consistently held by this Court that where a public employee has an expectancy of continued employment arising from contract, rules and understandings officially promulgated and fostered, he has a due process right under the 14th Amendment to

notice, reasons and a hearing before he can be dismissed from employment. *Perry* v *Sindermann*, 408 US 593; 92 S Ct 2694 (1972); *Bishop* v *Wood*, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074 (1976).

In the case at bar the Sixth Circuit held that petitioners were accorded due process of law and upheld the dismissal of their complaint notwithstanding the substantial allegations raised in petitioners' original and amended complaints challenging the procedures employed by the Respondent City in suspending and then subsequently terminating their employment, wages and other benefits.

It is alleged in petitioners' Third Amended Complaint (App. A-54) that the petitioners had a continued expectancy of employment. This expectancy was based on the fact that they were employed pursuant to a collective bargaining agreement with the Respondent City of Detroit, which clearly outlined the procedures and circumstances under which a police officer could be suspended or terminated. This contract incorporated those rights guaranteed by the U.S. Constitution all the rules and regulations of the Detroit Police Department and in addition the Detroit City Charter and any of its terms applying to the City of Detroit police officers and their working conditions. The petitioners clearly set forth in both the Second Amended Complaint and in their proposed Third Amended Complaint the various sections of the Collective Bargaining Agreement and the City Charter which applied to suspension and termination indicating an expectancy of continued employment until those procedures were employed to effect their suspension, dismissal, or termination of pay and fringe benefits.

Further, the Petitioners' expectancy of employment as alleged in their complaint was based on their past employment records which were excellent as indicated by the many awards, letters of commendation, official ratings, etc. This expectancy of continued employment has led the courts to require more in the way of due process protections in order to protect an individual's employment. In the case of *Gaffney et al* v *Silk et al*, 488 F2d 1248 (1973), a case involving the termination of disability payments to former policemen by action of the Town Selectmen, the Court held that ". . . the particular benefits to which petitioners are entitled were required and are enforceable entirely by state statute. However, the deprivations which they allege in their complaint concern not the termination of those benefits per se, but their termination without the essential requisites of procedural due process — notice, reasons, and a hearing — which are the clear requirements of the Fourteenth Amendment."

Petitioners are now, and have since the inception of this action, challenging the procedures employed in effecting their suspension and employment termination. Plaintiffs have alleged a denial of due process in their Second Amended Complaint (App. A-42) and in their proposed Third Amended Complaint (App. A-54) with regard to the procedures used to first suspend them from their employment without pay and fringe benefits on May 24, 1973, and in their termination of employment on October 28, 1974 by the Detroit Police Department made effective retroactive to May 24, 1973.

Petitioners have clearly alleged in their Second Amended Complaint and in their proposed Third Amended Complaint that they were denied a hearing

prior to their suspension and termination of all pay and benefits on May 24, 1973 with the first evidentiary hearing concerning their suspension/dismissal commencing on May 19, 1975 almost *two (2) years* later.

It appears that the Sixth Circuit overlooked or failed to fully appreciate the nature of the claims raised by petitioners in their complaint. It seems that the position taken by the District Court and the Sixth Circuit Court of Appeals is contrary to the great weight of many Supreme Court cases which have previously spoken to the issues raised in the petitioners' complaint. *Board of Regents* v *Roth, supra; Perry* v *Sindermann, supra; Bishop* v *Wood, supra.*

A reading of petitioners' Second Amended Complaint (App. A-42) clearly shows in the amendment to paragraph 16, that petitioners alleged a denial of their continued employment, wages and fringe benefits without a hearing in violation of the due process clause of the Fourteenth Amendment to the Constitution. A thorough reading of petitioners' proposed Third Amended Complaint (App. A-54), Counts 1 and 2, clearly shows allegations by the petitioners that they are claiming a denial of due process by the respondents' failure to provide them a hearing of any sort, prior to their suspension from employment and termination of all pay and benefits on May 24, 1973; failure to provide them with a specific notice of what departmental rules and regulations were violated at the time of the May 24, 1973 suspension; failure to provide them with a timely notice of charges forming the basis of their termination on October 28, 1974; failure to provide them with an evidentiary hearing on October 28, 1974, prior to the termination of their employment, wages and other fringe benefits; and the further deprivation of their "liberty"

under the Constitution by sending false and unsubstantiated information regarding the petitioners to prospective employers causing a loss of employment opportunity and further disseminating false and unsubstantiated information throughout the community in which they live causing damage to their good name and reputation.

The Court held in *Board of Regents* v *Roth, supra*, that, "The state, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case." For "(w)here a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." The court cited with approval, the case of *Wisconsin* v *Constantineau*, 400 US 433, 27 L Ed 2d 515, 91 S Ct 507 (1971).

A reading of petitioners' Second Amended Complaint and proposed Third Amended Complaint clearly contains allegations charging that the petitioners' reputations had been severely damaged in their community by the actions of the respondents and each of them. The action taken by the respondents occurred witholut having given either petitioner an opportunity to be heard concerning the truthfulness of the charges and statements made against them. Had this occurred, petitioners would not now be suffering the indignity of having their honor, good names, reputations and integrity held in such low esteem.

"In such a case, due process will accord an opportunity to refute the charge before university officials." In the present case, however, there is no suggestion, whatever that the respondent's "good name, reputation, honor or integrity" is at stake. *Roth, supra*. In the case now before this court there are clear and substantial allegations in the petitioners' Second Amended and proposed Third Amended Complaint that such concerns were at stake at the time of petitioner's suspension and subsequent termination from their employment.

The decision of the Sixth Circuit is in real conflict with the above cited and other decisions of this court as well as with the principles which are to guide it in applying the due process clause of the 14th Amendment, and its underlying policies. These conflicts justify the grant of certiorari to review the judgment below.

II

THE DECISION BELOW WILL HAVE A WIDE RANGING EFFECT ON MUNICIPAL EMPLOYMENT PRACTICES AND, AS SUCH, A CLEAR, UNEQUIVOCAL, AND COMPLETE DISSERTATION OF THE COURT'S POSITION BOTH LEGAL AND FACTUAL SHOULD BE SET FORTH IN AN OPINION.

As expressed in the petitioners' complaint (App. A-4) numerous challenges to the procedures employed by the respondent City of Detroit in effecting petitioners' discharges have been made. If the court accepts as true the well pleaded allegations contained in the petitioners' complaint, it would appear that the District Court and the Court of Appeals have given a full and complete license to a state and any of its political subdivisions, and more specifically the City of Detroit, to effect the

discharge of any police officer by using the same or similar methods and procedures as used against petitioners.

This case, if allowed to stand, will be cited as precedent to legitimize any suspension or termination action taken which follows a course similar to that taken to effect the petitioners' suspension and ultimate discharge.

In seeking to ascertain the basis of the Court of Appeals decision, since no full opinion is available to determine same, it appeared, from statements made by the panel in open court, that the Court was overly concerned with the failure of petitioners' union representatives to take their cases back before a panel of arbitrators thereby completely exhausting their contractual and administrative remedies. It thus appears the Court of Appeals took the position that petitioners' failure to completely exhaust their contractual administrative remedies precluded any Constitutional or civil rights litigation.

If this is the basis, this Court recently decided in the case of *Patsy* v *Board of Regents of the State of Florida*, No. 80-1874 decided June 21, 1982 that exhaustion of state administrative remedies is not a prerequisite to an action under 42 USC § 1983 in cases similar to the case at bar. The Court of Appeals failed to amplify its reasons for failing to rule on petitioners' civil rights claims founded on 42 USC § 1983 and § 1985(3). As a result, petitioners are in no position to know why their civil rights claims brought under this section were fatally defective.

Again, a clear decision from the Court of Appeals with supporting reasons both legally and factually would assist the respondent City of Detroit in knowing where and how it accorded petitioners' due process of law and why the court believed that petitioners' Constitutional and civil rights under 42 USC §§ 1983 and 1985(3) were not violated.

In short, the Court of Appeals only decided that petitioners were accorded due process of law regarding their loss of employment but failed to consider and rule on their other Federal grounds for relief under 42 USC § 1983 and § 1985(3).

A complete legal and factual opinion is absolutely essential to help guide the respondent City of Detroit in handling similar disciplinary cases and is important to petitioners to aid in the assessment of their future judicial course of action.

III

THE COURT OF APPEALS FAILED TO RULE ON PETITIONERS' FEDERAL CLAIMS FOR RELIEF FOUNDED ON 42 USC §§ 1983 and 1985 (3) WHICH WOULD HAVE PROVIDED AN ADDITIONAL AND/OR ALTERNATIVE BASIS OF RELIEF THEREBY AVOIDING A DISMISSAL OF THEIR LAWSUIT.

Notwithstanding the assertion of a claim for relief under 42 USC § 1983 and 1985(3) by petitioners in their Complaint, and the raising of these issues on appeal the Court of Appeals was completely silent regarding these issues when it rendered its decision upholding the dismissal of petitioners' complaint.

42 USC § 1983

The purpose of the Civil Rights Act, Title 42 USC § 1983, is to provide a civil action to protect persons against the misuse of power possessed by virtue of state law and made possible because one is clothed with the authority of the state. Whenever another does an official act, participates in another's official act, or omits to perform an act which he is legally required to do, this will cause a deprivation which falls under the coverage of § 1983. *Jobson* v *Henne*, 355 F2d 129 (1966).

"The Act (42 USC § 1983) prescribes two elements as requisite for recovery: (1) the conduct complained of must have been done by some person acting under color of law; and (2) such conduct must have subjected the complainant to the deprivation of rights, privileges or immunities secured by him by the Constitution and laws of the United States." *Basista* v *Weir*, 340 F2d 74 (3rd Cir. 1965). *Cf., Marshall* v *Sawyer*, 301 F2d 639 (9th Cir. 1962) and *Owens* v *City of Independence*, 445 US 622, 63 L Ed 2d 673, 100 S Ct 1398 (1980).

A perusal of the petitioners' complaint and the amendments thereto clearly reflects that substantial and sufficient allegations were raised satisfying the prerequisites for raising a claim for relief under § 1983.

Petitioners have alleged a denial of their civil rights under Title 42 USC, § 1983 by the City of Detroit, and several individually named officials acting on behalf of the City of Detroit.

The former Chief of Police, Respondent Phillip Tannian, was alleged to have deprived the petitioners of their "property" and "liberty" interests while acting under color of law without due process of law.

Paragraphs 27 through 33 of petitioners' proposed Third Amended Complaint (App. A-61, 62) clearly sets forth these claims with specific factual allegations showing how their rights were violated and in what manner.

The petitioners alleged further that respondent George Bennett, while head of the investigative squad investigating the petitioners, while acting under color of law, denied their rights to due process in the particulars as set forth in both the Second Amended Complaint (App. A-42) and the proposed Third Amended Complaint. (See paragraph 34 of petitioners' proposed Third Amended Complaint, App. A-62)

The respondent Chief of Police William Hart denied the petitioners' rights to a meaningful and impartial hearing as set forth in paragraphs 35 and 36 of petitioners' proposed Third Amended Complaint. (App. A-62, 63) Petitioners alleged in their proposed Third Amended Complaint (App. A-54) that the respondent Chief William Hart sat on the Trial Board panel adjudicating the petitioners' cases. No chief of police has ever sat on a Police Trial Board. The reason for this is clear when you consider the fact that the Police Trial Board functions primarily as a review board reviewing the decisions of the *Chief of Police*!

Petitioners allege in their proposed Third Amended Complaint (App. A-54) that respondent Chief William Hart appointed a member of the investigative squad, the one which investigated the petitioners' cases, to the Police Trial Board panel hearing the petitioners' cases. This was a further denial of petitioners' right to an impartial hearing within the meaning of the Fourteenth Amendment to the Constitution.

The deprivations of all rights of the petitioners hereinbefore mentioned were caused by the individual respondents named herein, and while acting under color of state and local law. The deprivations caused by the respondent City of Detroit occurred as a result of official action on the part of its employees both named and unnamed which action represented the official policy of the respondent City of Detroit.

If a ruling could be obtained on this aspect of petitioners' complaint, it may very well be sufficient to sustain their action.

42 USC § 1985(3)

On October 18, 1979 the District Court dismissed petitioners' 42 USC, § 1985(3) claim from its complaint on the basis that the claim as stated failed to state a claim sufficient to satisfy the necessary elements of that cause of action. The petitioners then filed the Second Amended Complaint with the Court realleging USC, § 1985(3) as a cause of action. Petitioners alleged additional and clarifying facts sufficient to state a cause of action against respondents. The Court dismissed the entire Second Amended Complaint on January 16, 1980 including the petitioners' claim under 42 USC, § 1985(3).

In *Griffin* v *Breckenridge*, 403 US 88, 102-3; 91 S Ct 1790 (1970) the court clearly spelled out the allegations necessary to sustain a § 1985(3) cause of action:

> "To come within the legislation (U.S.C. 1985(3)) a complaint must allege that the defendants did (1) 'conspire or go in disguise on the highway or on the premises of another' (2) 'for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the

> laws.' It must then assert that one or more of the conspirators (3) did or caused to be done 'any act in furtherance of the object of (the) conspiracy,' whereby another was (4a) 'injured in his person or property' or (4b) 'deprived of having and exercising any right or privilege of a citizen of the United States.' "

The petitioners' Second Amended Complaint fully alleges with factual particulars that the respondents conspired to deprive them of the equal protection of the laws and their equality of privileges and immunity under the laws of both the United States and the State of Michigan. Throughout petitioners' First Complaint and their Second Amended Complaint, such a conspiracy has been alleged.

The petitioners have specifically alleged that they were members of that class of police officers who resisted official wrong-doing and as such were stigmatized and subjected to severe and discriminatory Departmental discipline and scrutiny. As such they have alleged a "class based, invidiously discriminatory animus behind the conspirators action." *Griffin, supra.*

In *Cameron* v *Brock*, 473 F2d 608 (6th Cir. 1973) the court held "that § 1985(3)'s protection reaches clearly defined classes, such as supporters of a political candidate. If a plaintiff can show that he was denied the protection of the law because of the class of which he is a member, he has an actionable claim under § 1985(3)." (At p 610)

Plaintiffs here have alleged in their complaint facts sufficient to state a claim under § 1985(3). The alleged invidious classification of police officers unsupportive of official wrong-doing is clearly sufficient. "A more invidious classification than that between persons who

support government officials and their policies and those who are critical of them is difficult to imagine. Appellees drew a line that was not merely invidious but one that also struck at the very head of the protections afforded all persons by the First and Fourteenth Amendments." *Glasson* v *City of Louisville*, 518 F2d 1248 (1973).

If the Court of Appeals had considered petitioners' claim for relief under § 1985(3) and had issued a decision thereon, petitioners may have had an additional basis for obtaining the sought-after relief.

The decision by the Court of Appeals clearly undercut and undermined the effect and coverage of this section of the civil rights act and is in conflict with precedent established by this court. These concerns justify the grant of certiorari to review the judgment below.

IV

THE DECISION BELOW HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL IN WHICH CIVIL RIGHTS COMPLAINTS ARE CONSTRUED SUCH THAT THIS COURT'S POWER OF SUPERVISION IS COMPELLED TO MAINTAIN CONSISTENCY OF LEGAL BOUNDARIES.

The petitioners' Complaint was dismissed by the District Court for failure to state a claim upon which relief could be granted under rule 12b(6) of the Federal Rules of Civil Procedure. This action was upheld by the Court of Appeals. (App. A.2) Rule 8(F) of the Federal Rules of Civil Procedure provides that:

> "*Construction of Pleadings*. All pleadings shall be so construed so as to do substantial justice."

In view of the extensive nature of the claims asserted by petitioners in their Complaint it hardly appears that the Court of Appeals held the view of liberality in construing their complaint.

It is petitioners' further position that both courts below failed to properly and liberally construe their civil rights complaint. Pursuant to the Federal Rules of Civil Procedure and prior court decisions, a liberal construction of petitioners' civil rights complaint was mandated.

This Court and its lower courts have consistently held that pleadings must be liberally construed in any civil rights action, and a motion to dismiss a civil rights complaint may be granted only where it clearly appears that a plaintiff could prove no set of facts which would entitle him or her to relief. Neither lower court has made such a finding against petitioners.

Although cited in petitioners' brief, the Court of Appeals failed to give due weight to this court's holding concerning the construction of civil rights complaints in the case of *Conley* v *Gibson*, 355 US 41, 78 S Ct 99 (1957). This Court held that a civil rights complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim entitling him or her to relief. See also *Jones* v *Hopper*, 410 F2d 1323 (10th Cir 1969) for a well reasoned opinion incorporating the holding in *Conley*.

A dispute regarding the alleged deprivation of constitutional rights is necessary because it is an express prerequisite of federal jurisdiction under Title 28 USC § 1343. Further, if the deprivation of such a constitutional right is alleged, the complaint will be generally sufficient under *Conley*, *Jones* and other cases, to

withstand a motion to dismiss under Rule 12 or a motion for summary judgment under rule 56 of the Federal Rules of Civil Procedure.

It appears by these and other decisions of this Court that the standard for dismissal set forth in *Conley, supra*, does not become operative unless a privilege or right secured by the constitution is identified and put into issue by the allegations of the complaint; that is, if the denial of a specific constitutional right is alleged, the action should not be dismissed unless it is beyond doubt that the plaintiff could prove no facts to support his or her claim.

Again petitioners make reference to the original and amended complaints filed in this action (App. A-4, A-42, A-54). Those complaints all contain specific allegations of a denial of constitutional and civil rights.

In view of the fact that the orders, decisions and opinions filed by the District Court and Appellate Court in this cause supporting their decision of dismissal fail to specifically deal with where the petitioners' complaints are defective, we are left to surmise.

However, it does not appear that the Court of Appeals was concerned with a liberal construction of the complaint as it focused, by its statements and questions from the bench during oral argument, on why the petitioners and/or their union representatives failed to seek another review of their cases before the panel of arbitrators as if to say that this is a sufficient basis for denying petitioners Federal claims for relief founded under the United States Constitution. Whether the Court of Appeals used this as a basis for its decision is uncertain as it was presented letters from the petitioners'

union representatives indicating the decision not to return to arbitration was the union's and not petitioners' who diligently sought another review.

These conflicts with prior decisions of this court and the uncertainty which the decision of the court of appeals has created concerning the reasons for its decision justify the grant of certiorari to review the judgment below.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

ASHFORD and CANNON, P.C.

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APPENDIX

ORDER

(United States Court of Appeals
For the Sixth Circuit)

(Filed April 27, 1982)

(Craig Pollard and Henry Meadows, Plaintiffs-Appellants, Cross-Appellees v. The Detroit Police Department; City of Detroit; William J. Hart a/k/a Chief of Police; George Bennett a/k/a Deputy Chief of Police, Defendants-Appellees, Cross-Appellants. Nos 80-1327 and 80-1361)

BEFORE: Lively and Merritt, Circuit Judges; and Phillips, Senior Circuit Judge.

No active judge in regular service on the court having requested consideration en banc of the petition for rehearing filed herein by the plaintiffs-appellants the petition has been referred to the panel which originally heard the appeal. Upon consideration of the petition for rehearing the court concludes that the issues raised therein were fully considered upon the original submission and decision of the case and that rehearing is not required.

The petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

ORDER

(United States Court of Appeals
For the Sixth Circuit)

(Filed Feb. 17, 1982)

(Craig Pollard and Henry Meadows, Plaintiffs-Appellants, Cross-Appellees v. The Detroit Police Department; City of Detroit; William J. Hart a/k/a Chief of Police; George Bennett a/k/a Deputy Chief of Police, Defendants-Appellees, Cross-Appellants

BEFORE: Lively and Merritt, Circuit Judges; and Phillips, Senior Circuit Judge.

The plaintiffs-appellants are two former Detroit police officers who were suspended without pay upon being indicted by a state grand jury. Following their acquittal of the state charges, each plaintiff was charged with six violations of departmental rules, all relating to alleged activities which occurred prior to the time of their suspension. They were represented in the state criminal proceedings and in departmental proceedings by the same counsel.

After charges were preferred the plaintiffs appeared at an informal "Chief's Hearing" where the charges against them were read and they were permitted to enter pleas of not guilty. The plaintiffs were then discharged. They next appeared before the Board of Police Commissioners after which a Trial Board Hearing was held. The Trial Board found the plaintiffs guilty of four of the six charges and affirmed their termination. The plaintiffs then appealed to an arbitration board, which sustained only two of the charges and remanded the matter to the Trial Board for reconsideration of punishment. In its order the arbitration board noted that upon issuance of a

supplemental decision and order of discipline by the Trial Board the matter could again be brought before the board of arbitrators for review of the fairness of the penalty. At a closed session the Trial Board enforced the termination of plaintiffs, but the plaintiffs did not return the matter to the arbitration board. Instead they sought other relief and eventually filed this action.

The basis of the civil rights action in the district court was an alleged denial of due process. There were also pendent claims arising under Michigan common law. In holding that there had been no due process violation the district court stated:

> The termination procedure that was used by the defendants involves numerous levels of due process, and despite what may be some missteps in that procedure, this court could not find that the plaintiffs' due process rights have been violated under the facts as pleaded.

The district court also declined to exercise jurisdiction over the Michigan common law claims.

Upon consideration of the briefs and oral arguments of counsel together with the record on appeal this court concludes that the district court correctly determined that there had been no denial of due process. There was no abuse of discretion in the district court's declining to exercise jurisdiction over the common law claims.

The judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

COMPLAINT FOR DAMAGES

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed October 24, 1978)

(Pollard and Meadows v. City of Detroit, et al. No. 78-72724)

Now comes Plaintiffs, Craig Pollard and Henry Meadows, herein, by and through their attorneys, Ashford, Cannon, Lumumba and Shakoor, and complaining of Defendants as follows:

1. That Plaintiffs, Craig Pollard and Henry Meadows, reside in the City of Detroit, County of Wayne, State of Michigan, and that they are both citizens of the United States.

2. That Defendant, the Detroit Police Department is the law enforcement agency of the City of Detroit, in the County of Wayne and in the State of Michigan.

3. That the Defendant, the City of Detroit, is a municipal corporation, duly organized and existing under the laws of the State of Michigan and is situated in the County of Wayne.

4. That the Defendant, William L. Hart, is the duly appointed Chief of Police for the Detroit Police Department, and at all times mentioned herein was acting in such official capacity as agent for the Detroit Police Department and the City of Detroit.

5. That the Defendant, George Bennett, was the duly appointed Deputy Chief of Police for the Detroit Police Department and at all times mentioned herein was acting in such official capacity as agent for the Detroit Police Department and the City of Detroit.

6. That the Defendant, Phillip G. Tannian was the duly appointed Chief of Police for the Detroit Police Department and at all times mentioned herein was acting in such official capacity as agent for the Detroit Police Department and the City of Detroit.

7. That this action arises under the Constitution of the United States, the Fourteenth Amendment due process clause; the Constitution of the State of Michigan, Article 1, § 17, Article 11, § 5 and the civil rights provisions of Articles 1 and 2; the Civil Rights Act, § 1985(3), Title 42 U.S.C.; this matter in controversy exceeds, exclusive of interests and costs the sum of $10,000.00 and this Court has jurisdiction by reason of Title 28 U.S.C. § 1331a and § 1343.

8. That on 27 November 1967, Henry Meadows was appointed as a patrolman in the employ of the Detroit Police Department of the City of Detroit. Subsequently he earned meritorious awards on 4 July 1968, 17 July 1970, 29 January 1971, 24 June 1971 and 7 July 1972. In 1973 he was receiving a salary of $15,938.00; in 1974, but for his wrongful suspension, he would have received a salary of $16,166.00; and in 1975, a salary of $17,292.00, in 1976, 1977 and 1978, a salary of $17,292.00, in addition to raises in the amount of five percent in 1974 and four percent in 1975, in addition to cost of living allowances in July, 1974 of $188.00, in September of 1974 of $228.00, and in 1975, 1976, 1977 and 1978 of at least $479.00 per year.

9. That on 9 September 1970 Craig Pollard was appointed as a patrolman in the employ of the Detroit Police Department of the City of Detroit subsequent thereto and in 1973, he was receiving a salary of $14,888.00; in 1974, but for his wrongful suspension, he would have received a salary of $15,938.00; in 1975, 1976,

1977 and 1978, a salary of $17,292.00 and in addition, raises of five percent in 1974 and four percent in 1975 plus cost of living allowances in July, 1974 of $188.00, in September of 1974 of $228.00 and in 1975, 1976, 1977 and 1978 of at least $479.00 per year.

10. That in September of 1970 Plaintiff Henry Meadows was assigned to the Narcotics Unit of the Tenth Precinct of the Detroit Police Department and that in December of 1971, Plaintiff Craig Pollard was assigned to the same narcotics detail.

11. That Plaintiffs Henry Meadows and Craig Pollard were mainly responsible to their immediate superior, or Sergeant Rudy Davis.

12. That thereupon in 1967 Henry Meadows, and in 1970 Craig Pollard, entered into the performance of the assigned duties as police officers performing the same exceptionally well. During the years 1971-1972, while assigned to the narcotics unit above mentioned, Plaintiffs Craig Pollard and Henry Meadows conducted 364 raids, 1,169 arrests of which 306 thereof resulted in trials at the Recorders Court, and 141 of which resulted in convictions. They were also responsible for bringing 684 defendants to Traffic Court of which 352 were convicted and were responsible for 93 other arrests, not related to narcotics.

13. That during the years 1971-1972, Plaintiffs Craig Pollard and Henry Meadows were responsible for the confiscation of 603 weapons, $143,616 in narcotics proceeds, 8 kilos of heroin, 3 kilos of cocaine, 25 pounds of marijuana and 1,200 controlled drug tablets.

14. That prior to their wrongful and illegal discharge, described more fully hereinafter, Plaintiffs Craig Pollard and Henry Meadows diligently and faithfully performed

the duties assigned them, complying with all orders and directives from their superior officer, Sergetant Rudy Davis and other superior officers and complying with all the duties specified in their contracts of employment in every respect.

15. That at all times mentioned herein, Plaintiffs were and are now ready, willing and able to perform, have offered to perform all of their obligations under the contract, but have been prevented by Defendants and their agents, named and unnamed specifically herein, and their agents acting by and on behalf of the Detroit Police Department and the City of Detroit from performing their duties.

16. That on 24 May 1973 Plaintiffs Craig Pollard and Henry Meadows were wrongfully suspended from the performance of their duties as police officers without notice or a hearing in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, the Constitution of the State of Michigan, art 1 § 17, the Public Act 78, § 5.3364 of the State of Michigan, pursuant to a conspiracy, detailed more fully hereinafter in breach of the employment contract with the City of Detroit and the Detroit Police Department, and in breach of the contract of the City of Detroit with the Detroit Police Officers Association, denying your Plaintiffs their civil and constitutional rights, the protections afforded them by the Departmental rules and regulations in force on the 24th of May, 1973 in the following particulars:

(a) The Notices of Suspension received by Patrolmen Henry Meadows and Craig Pollard included neither charge of violation of Departmental rules or regulations, nor of a crime, but only

that they had been indicted by a Wayne County Citizens Grand Jury. This Notice was not signed by any superior or commanding officer, responsibility therefore not being taken by the Chief of Police, then John Nichols, nor any other agent acting in his stead. Robert Moag, the Commanding Officer then of the Tenth Precinct did not sign this insufficient Notice as is immediately obvious from the attached copies thereof: (Exhibit A)

(1) In pertinent part, the applicable rules and regulations of the Police Department *72-17-L-5-D*, and the Detroit Police Department *manual, chapter 3, section 28*, directly violated are identical in mandating:

> "d. *Charges*. The *charges shall be written* in triplicate, one copy to be forwarded to the commissioner through official channels, one to be served the accused, and one to be kept by the commanding officer preferring the charges.
>
> Any accused member of the department shall have at least a twenty-four hour notice of his trial board hearing and *shall be furnished with a copy of the charges and specifications*. The officer serving the charges and notice shall obtain the accused member's signature on D.P.D. 227, add his own signature, the date and time of service, and return the form to his commanding officer." (emphasis added)

(2) In addition to the *Public Acts of Michigan, P.A. 78, section 5.3364* also violated states in pertinent part:

> *"Provided, however, no member of any fire or police department within terms of this act shall be removed, discharged, reduced in rank or pay, suspended or otherwise punished except for cause, and in no event until after he shall have been furnished with a written statement of the charges and the reasons for such actions, and all charges shall be void unless filed within 90 days of the date of the violation.*

(b) Your Plaintiffs were suspended without any "written charges" being filed against them, without a hearing, neither formal nor informal, without pay and continuation of benefits all to their extensive damage.

17. That not until 24 October 1974 were your Plaintiffs charged with the following: alleged improprieties that supposedly incurred on or about September of 1972, more than *two entire years previously*:

The following charges are applicable to Police Officer Henry C. Meadows.

Charge One: Neglecting to report any member of the Department known to be guilty of violation of any rule, regulation or order issued for the guidance of the Department.

Specification One: That he, Police Officer Henry C. Meadows, of the Tenth Precinct did while on duty on December 1st, 1972, neglect to report a member of the Department, to-wit, Police Officer Craig J. Pollard of the

Tenth Precinct, who is known to Officer Meadows to be guilty of a violation of the Department, to-wit: that Police Officer Craig J. Pollard accepted a bribe of money, One Thousand Dollars, to effect the release of a police prisoner, to-wit: Charles Williams; this being in violation of General Order 72-17, Section K, Subsection 50.

Charge Two: Willfully making a false, oral or written statement or report.

Specification Two: That he, Police Officer Henry C. Meadows, of the Tenth Precince did while on duty on September 5th, 1972, willfully make a false written statement on a search warrant affidavit, thereby advising the Court, to-wit: Recorder's Court, City of Detroit, Michigan, did receive on eight previous occasions information from a reliable informant in an effort to obtain a search warrant for Apartment 103 of 3750 Chicago, Detroit, Michigan, this being in violation of General Order 72-17, Section K, Subsection 7.

Charge Three: Neglecting to turn over all property found, seized or taken from persons arrested to the proper officer without unnecessary delay.

Specification Three: That he, Police Officer Henry C. Meadows of the Tenth Precinct did while on duty on September 5th, 1972 take from a person arrested, to-wit: Judson L. Mathis, approximately Seven Hundred Dollars, did thereafter neglect to turn the approximately Seven Hundred Dollars over to the proper officer without unnecessary delay; is being in violation of General Order 72-17, Section K, Subsection 36.

Specification Four: That he, Police Officer Henry Meadows of the Tenth Precinct did while on duty on September 6, 1972 seize property, narcotics, herein, at the scene of a police narcotics raid at Apartment 102 at

2648 Rochester, Detroit, Michigan; did thereafter neglect to turn the seized property over to appropriate police authorities without unnecessary delay; this being in violation of General Order 72-17, Section K, Subsection 36.

Specification Five: That he, Police Officer Henry C. Meadows of the Tenth Precinct did on September 22nd, 1972 neglect to turn over to the proper departmental officer without unnecessary delay all property found, seized or taken from persons arrested, to-wit: That he, Police Officer Henry C. Meadows, delivered fourteen packets of narcotics, heroin, to a citizen, to-wit: Ronald Johnson; this being in violation of General Order 72-17, Section K, Subsection 36.

Specification Six: That he, Police Officer Henry C. Meadows of the Tenth Precinct did on September 6, 1972 neglect to turn over all property found, seized or taken from persons arrested to the proper departmental officer without unnecessary delay; in that Police Officer Henry C. Meadows deposited a quantity of narcotics in the garbage can at the rear of 3900 Joy Road, Detroit, Michigan; this being in violation of General Order 72-17, Section K, Subsection 36.

And these charges have been signed by Inspector Reginald C. Harvil of the Tenth Precinct.

The following charges are relative to Police Officer Craig J. Pollard.

Charge One: Participating or becoming involved in any arrangement between criminals and persons who have suffered by their acts with a view to permitting the defendant to escape from penalties provided by law.

Specification One: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did on December 1st, 1972 enter into an agreement with a police prisoner, to-wit: Charles L. Williams, a suspected dealer in the trafficking of illegal narcotics to accept the bribe of One Thousand Dollars in cash in return for the release of Charles Williams from police arrest; this being in violation of General Order 72-17, Section K, Subsection 45.

Charge Two: Accepting bribes of money, valuable services or any other form of compensation or consideration.

Specification Two: That he, Police Officer Craig J. Pollard of the Tenth Precinct did while on duty on December 1st, '72, release from police custody a prisoner, to-wit: Charles L. Williams after Police Officer Craig J. Pollard having received a bribe of One Thousand Dollars from Charles L. Williams; this being in violation of General Order 72-17, Section K, Subsection 14.

Charge Three: Willfully making a false, oral or written statement or report.

Specification Three: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did while on duty on Sepbember 5th, 1972, willfully make a false written statement on a search warrant affidavit, thereby advising the Court, to-wit: Recorder's Court, City of Detroit, that he had received information from a reliable informant on numerous occasions in an effort to obtain a search warrant for Apartment 102 of 2648 Rochester, Detroit, Michigan; this being in violation of General Order 72-17, Section K, Subsection 70.

Charge Four: Neglecting to report any member of the Department known to be guilty of violation of any rule, regulation or order issued for the guidance of the Department.

Specification Four: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did while on duty of September 6, 1972, neglect to report a member of the Department, to-wit: Police Officer Henry C. Meadows of the Tenth Precinct, who was known to Officer Craig J. Pollard to be guilty of a violation of an order of the Department; to-wit: That he, Police Officer Henry C. Meadows, had neglected to turn over all property found, seized or taken from persons arrested through appropriate police authority without delay; this being in violation of General Order 72-17, Section K, Subsection 50.

Charge Five: Neglecting to turn over all property found, seized or taken from persons arrested to the proper officer without unnecessary delay.

Specification Five: That he, Police Oficer Craig J. Pollard of the Tenth Precinct, did on September 6th, 1972, being then accompanied by Police Officer Henry C. Meadows of the Tenth Precinct, seize property, narcotics, heroin, at the scene of a police narcotics raid at Apartment 102 at 2648 Rochester, Detroit, Michigan, and did thereafter neglect to turn the seized property over to appropriate police authorities without unnecessary delay; this being in violation of General Order 72-17, Section K, Subsection 36.

Specification Six: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did while on duty of September 5th, 1972 take from a person arrested, to-wit: Judson L. Mathis, approximately Seven Hundred Dollars, did thereafter neglect to turn the approximately Seven Hundred Dollars over to the proper departmental officer in a timely manner, this being in violation of General Order 72-17, Section K, Subsection 36.

18. That these charges of October, 1974 were preferred against your Plaintiffs after they had been indicted, tried and acquitted on 18 September 1974, in Recorder's Court of:

1) Conspiracy to obstruct justice, in violation of MCLA 750.505 as amended by PA 1954, No. 66 and section 750.157(a) added by PA 1966, No. 296 and

2) Obstruction of justice in violation of MCLA 750.505 as amended by PA 1954, No. 66, that originated from the same and identical incidents allegedly occurring on or about September of 1972.

19. That the untimely procedures described in paragraph 18 immediately above were also conducted in blatant disregard of the provisions of the Detroit Police Departmental Rules and Regulations, section 72-17-L-5, Departmental Manual Directives of Chapter 3, section 28, Public Act 78 of the laws of Michigan, section 5.3364, the due process laws of the Fourteenth Amendment to the United States Constitution and Article I, section 17 of the Constitution of the State of Michigan. (See Exhibit B)

20. That on or about 28 October 1974, Chief Phillip Tannian fired your Plaintiffs at a Chief's Hearing, not with the concurrence of four members of the Board of Police Commissioners, mandated by the Detroit City Charter at section 7-1107 that had been in effect since 1 July 1974, which reads in pertinent part as follows:

"An employee charged with a major offense is presumed innocent and shall not forfeit any pay or seniority rights pending final action by the Board of Police Commissioners except with the concurrence of four members of the Board of Police Commissioners."

21. That Chief Phillip Tannian acted beyond the scope of his authority as the Chief of Police for the City of Detroit and acted arbitrarily and capriciously in summarily terminating your Plaintiffs in this manner.

22. That your Plaintiffs thereupon appealed to the Trial Board, composed of William L. Hart, Chairman of the Board, Inspector Richard Dungy and Inspector Rufus Anderson. After the Board's adverse ruling, an appeal was taken to an Arbitration Panel, which returned their cases back to the Trial Board.

23. That the Plaintiffs and their attorneys were not allowed to be present at this Appeal, and were instructed of the same from one Dorothy Knox, Sergeant, in the Internal Affairs Department.

24. That Plaintiffs' cases never went before the Board of Police Commissioners, notwithstanding petitions thereto by your Plaintiffs in writing, in violation specifically of the above-cited provisions of the Charter for the City of Detroit. No response had been received from the Board of Police Commissioners when a complaint was filed with the Human Rights Department of the City of Detroit on or about 29 December 1977.

25. That at all times mentioned herein Defendants the City of Detroit, Detroit Police Department, William L. Hart, Philip Tannian, George Bennett, acted in an arbitrary and capricious manner, in an abuse of the powers vested in them by virtue of their offices and employment for the City of Detroit.

26. That Plaintiffs have exhausted all administrative remedies available to them and provided by law or have been prevented from doing so by acts of your Defendants.

WHEREFORE Plaintiff Craig Pollard prays for actual damages in the amount of $115,000.00 in damages for loss of salary, cost of living allowances, benefits and interests; punitive damages in the amount of $250,000.00 plus attorney fees, costs and interest so wrongfully incurred.

WHEREFORE Plaintiff Henry Meadows prays for actual damages in the amount of $120,000.00 in damages for loss of salary, cost of living allowances, benefits and interest; punitive damages in the amount of $250,000.00 plus attorney fees, costs and interest so wrongfully incurred.

COUNT II

CONSPIRACY TO DEPRIVE PLAINTIFFS OF THEIR CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW

27. Plaintiff realleges Paragraphs 1 through 26 set forth above and incorporates the same herein by reference.

28. That from on or about 6 September 1972 to the present date of the filing of this Complaint, the Detroit Police Department, the City of Detroit, William L. Hart, Phillip G. Tannian, George Bennett and other unnamed agents of the same conducted an ongoing conspiracy against your Plaintiffs Craig Pollard and Henry Meadows to deny them the benefits and protections afforded by established departmental rules and regulations, the protections due them from the contract with the City of Detroit and the Detroit Police Officers Association, the City Charter of the City of Detroit, the due process clause of the Fourteenth Amendment to the United States Constitution, Article I, section 17 of the Constitution of

the State of Michigan, the laws and statutes of the State of Michigan in violation of 42 USC § 1983 and § 1985(3) and the further particulars as follows:

(1) That as mentioned above in paragraphs 16 through 26, the untimely procedures and tactics used to effect your Plaintiffs' dismissals were unfair, and in violation of the most rudimentary notions of due process of law.

(2) That the charges themselves, as detailed in paragraph 17 were unnecessarily vague and unspecific and by their very wording, the degree of specificity sufficient to put your Plaintiffs on adequate notice of actions being taken against them, were lacking in violation of the requirements of due process of law as mandated by the due process clause of the Fourteenth Amendment to the United States Constitution and Articles I and II of the Constitution of the State of Michigan.

(3) That after their illegal suspension of May of 1973, and prior to their various hearings in 1975, your Plaintiffs were denied reasonable discovery necessary in the preparation of adequate and meaningful defenses. More specifically, witnesses statements were not received and were specifically refused both prior to the Chief's Hearing, the Trial Board Hearing and appeal. As is readily apparent from the Transcript of the Trial Board Hearing of 19 May 1975 at pages 11 through 16, attached hereto and marked as Exhibit A, subpoenas were not issued, copies of relevant search warrants were refused, copies of vouchers of Narcotics Section of the Tenth Precinct for pertinent dates were refused, copies of the pertinent pages of an informant's book were withheld, items on the tapes for the Chief's Hearing of 28 October 1974 were erased or negligently misplaced.

(4) That on pages 23 and 24 of the Transcript of the Trial Board Hearing of 19 May 1975 attached hereto and marked as Exhibit C, again, these reasonable requests were on the record specifically denied:

> "Care packages would (in the past) arrive from 1300 Beaubean to the Lippitt law firm (that represented the Detroit Police Officers Association), giving away the store. That is no longer the case, that is no longer the rule . . . There aren't written records and we are not going to take our over-burdened staff and have them transcribe the tapes for you . . . Care packages will no longer be sent to Southfield . . ."

And on page 32 of the same transcript, the Department's attorney, a Mr. Jeffrey Taft, specifically refused to "prepare your (Officers Pollard and Meadows) defense for you . . . to help prepare a defense that I find to be objectionable to begin with." (Exhibit D)

(5) That the wrongful terminations of your Plaintiffs by Phillip Tannian was affirmed by the Trial Board and that such decision of the Trial Board was appealed to arbitration but referred back to the Trial Board composed of the same persons who had rendered the original adverse ruling. More specifically, at the time of the appeal William Hart had recently been appointed Chief of Police. As such he was the Chairman of the Trial Board and was on appeal effectively asked to review his own decision. Due process and fairness would have dictated that he appoint another Board. As the proceedings were channeled and conducted however, Plaintiffs were in effect denied a meaningful, fair and unbiased appeal.

(6) That the proceedings of the Trial Board of 19 May 1975, the Transcript is replete with instances of unfairness and violations of applicable laws and other regulations demonstrate numerous erroneous refusals by the Chairman, William L. Hart, to allow your Plaintiffs to present evidence on their behalf and to effectively impeach the credibility of witnesses called by the Department; more specifically your Plaintiffs and their attorneys were repeatedly refused opportunities to impeach the credibility of one *Charles Williams* who on page 224 (reference Exhibit E) admitted to the killing of one Cleveland Penn, "and dumping the body somewhere," admitted to the selling of narcotics, outlining in detail his dope pads on page 208, (Exhibit F)

Q. "Where did you have your dope pads?
A. "Where?
Q. "Yeah.
A. "Well I started when I was living on Tyler, then I got a place on, I think it was Twelfth and then on Chicago,"

admitted to being an "ambulance chaser," at page 211, (Exhibit G)

A. "The last job I had was working at Chrysler's.
Q. And how long a period of time did you have that?
A. About two years. 'I chased a few accidents too.' (emphasis added)
Q. What do you mean by "chased a few accidents"?
A. You all call it 'ambulance chasing.' " (emphasis added),

was at the time of his testimony at this Trial Board under two federal indictments, admitted to lying before the grand jury at page 231, (Exhibit H)

Q. "(By Mr. Ramsdale): Mr. Williams, did you make one statement regarding what you did with the shotgun and the 30/30 rifle at Grand Jury, and in another statement at the preliminary exam state a different statement at your trial?

A. Yes, I did.

Q. Therefore, you lied when you were before the Grand Jury and—

A. I guess so.

Q. —at the preliminary exam?

A. Right,"

This witness' testimony was used heavily to justify the decisions to terminate your Plaintiffs.

(7) That the decisions of the Trial Board were unsupported by competent or substantial evidence and in fact were based on contradictory and unreliable evidence from questionable and biased sources and without regard to exculpatory statements and evidence that was supportive of your Plaintiffs' defenses.

(8) That the appropriate burden of proof, guilt beyond a reasonable doubt, was not applied in Plaintiffs' cases. The Detroit Police Department was successful in having applied only the burden of guilt by a preponderance of the evidence, wholly inappropriate in such proceedings.

WHEREFORE Plaintiff Craig Pollard prays for compensatory damages in the amount of $250,000.00 and punitive damages in the amount of $500,000.00, plus attorney fees, costs and interest so wrongfully incurred.

WHEREFORE Plaintiff Henry Meadows prays for compensatory damages in the amount of $250,000.00 and punitive damages in the amount of $500,000.00 plus attorney fees, costs and interest so wrongfully incurred.

COUNT III

DAMAGES DUE TO LIBELOUS AND SLANDEROUS PUBLICATIONS

30. Plaintiffs reallege paragraphs 1 through 7, 12 and 13 as set forth above and incorporates the same hereinafter by reference.

31. That prior to and at the time of the commission of the acts hereinafter alleged, Plaintiffs Henry Meadows and Craig Pollard enjoyed good reputations and work records as public officers for the City of Detroit (See Exhibit I, J and K) depicting the good reputation of your Plaintiffs as noted in letters from the community. See Exhibit L, included as an example of the reputation in the legal community of your Plaintiffs as explained by the testimony of Judge Joseph E. Maher in his testimony at the Trial Board Hearing at page 365, that evaluated Meadows' and Pollards' "reputation for truth and honesty as very excellent officers". . . Judge Maher "certainly would believe them if they testified under oath." Id.

32. That in 1973 and 1974, your Defendants the Detroit Police Department and the City of Detroit, maliciously caused to be published by acting through various named and unnamed agents, material false and defamatory allegations of bribery, various other illegal drug related activities and the illegal obstruction of justice. This false and defamatory matter as circulated within the Departmental publications, the "Detroit News and Free Press," in reports concerning your Plaintiffs to other prospective employers, and within the various Hearings concerning your Plaintiffs.

33. That thereby the Defendants meant and intended to mean, and was understood by the readers of said publications that your Plaintiffs were engaged in the above-mentioned criminal activities.

34. That such words were wholly and completely false.

35. That by reason of these false publications your Plaintiffs were denied employment with other employers, and as is noted in Exhibit M, Plaintiff Henry Meadows specifically was denied employment by the Civil Service Commission, by Blue Cross and Blue Shield, Exhibit N, State of Michigan, Department of Corrections, Exhibit O, Wayne County, State of Michigan, and in addition Plaintiffs Pollard and Meadows were denied employment with General Motors Corporation in Milford, Michigan.

WHEREFORE, your Plaintiff Craig Pollard prays for $250,000.00 in compensatory damages resulting from damages to his reputation and loss of employment opportunities, $250,000.00 in punitive damages plus interest, his cost and attorneys fees so wrongfully incurred.

WHEREFORE, your Plaintiff Henry Meadows prays for $300,000.00 in compensatory damages resulting from damage to his reputation and loss of employment opportunities, $250,000.00 in punitive damages plus interest, his cost and attorneys fees so wrongfully sustained.

COUNT IV

CONSEQUENTIAL AND SPECIAL DAMAGES FOR LOSS OF WIFE'S SOCIETY AND SERVICES AND FOR MEDICAL EXPENSES

36. Plaintiffs reallege paragraphs 1 through 7 as set forth above, and incorporate the same herein by reference.

37. That as a direct result of the breach of employment contract and the deprivation of your Henry Meadows' constitutional and civil rights by your Defendant, Plaintiff Henry Meadows' wife sustained severe emotional, psychological and psychiatric injuries.

38. That by reason of such injuries suffered and sustained by Plaintiff's wife and in an effort to heal, cure, treat and attempt to relieve the same, Plaintiff Henry Meadows has been and in the future will be obliged and compelled to incur and pay out considerable sums of money for psychological and psychiatric services and drug therapy, the extent of which has not been ascertained.

39. That by reason of such injuries suffered and sustained by Plaintiff's wife, Claudia Meadows, Plaintiff has been deprived of services of his wife, and his comfort and happiness in her society and companionship have been impaired, and it appears that such deprivation and impairment will long continue, all of Plaintiff Meadows' damage.

WHEREFORE, Plaintiff Henry Meadows demands a judgment against Defendants in the amount of $50,000.00 in compensatory damages and $100,000.00 in punitive damages plus attorneys fees, costs and interest so wrongfully incurred.

/s/ Craig Pollard

/s/ Henry C. Meadows

Ashford, Cannon, Lumumba and Shakoor

By: James Cannon, Jr. (P 28005)
Attorneys for Plaintiffs
11000 West McNichols, Suite 122
Detroit, Michigan 48221
(313) 345-5900

Dated: Oct. 20, 1978

DETROIT POLICE DEPARTMENT

NOTICE OF SUSPENSION

This is an official notification of suspension under the provisions of the rules and regulations of the Detroit Police Department. The charge cited below is an initial charge and is subject to change upon review of the details and circumstances of the case.

Suspended Member [illegible] (Rank, Name, Badge, and Unit of Assignment.)

Date of Suspension May 26 1973 Date of Notification May 24, 1973

Initial Charge and Preliminary Reason(s) [illegible] by the Wayne County Circuit Grand Jury

Notifying Officer [illegible] (Signature, Rank and Title)

Indicate Bureau Commander (During Normal Duty Hours) or Field Duty Officer (At Other Times)

Notified: [illegible] Lt. D. Tuttle

Rank Name Date Time Per Notifying Officer

Distribution:

1 – Superintendent (Thru Channels)
1 – Personnel Division
1 – Accounting Office
1 – Officer Concerned
1 – Officer's Unit File
1 – Representing Organization (DPOA, L&S Association)

D.P.D. 318 (2-72)

EXHIBIT A

A-24

DETROIT POLICE DEPARTMENT **NOTICE OF SUSPENSION**

This is an official notification of suspension under the provisions of the rules and regulations of the Detroit Police Department. The charge cited below is an initial charge and is subject to change upon review of the details and circumstances of the case.

Suspended Member Patrolman Craig J. Pollard, Badge 3775, Tenth Precinct
(Rank, Name, Badge, and Unit of Assignment)

Date of Suspension May 25, 1973 Date of Notification May 25, 1973

Initial Charge and Preliminary Reason(s) Officer officially indicted by the Wayne County Circuit Court Grand Jury

Notifying Officer [signature] Lt. Inspt. 5113 Inspt. Div.
(Signature, Rank and Title)

Indicate Bureau Commander (During Normal Duty Hours) or Field Duty Officer (At Other Times)

Notified: _____ _____ _____ _____ _____
Rank Name Date Time By Notifying Officer

Distribution:

1 – Superintendent (Thru Channels)
1 – Personnel Division
1 – Accounting Office
1 – Officer Concerned
1 – Officer's Unit File
1 – Representing Organization (DPOA, L&S Association)

D.P.D. 318 (3-73)

A-25

The Detroit Police Department Rules and Regulations 72-17-L-5d *charges* state:

> "d. *Charges*. The charges shall be written in triplicate, one copy to be forwarded to the commissioner through official channels, one to be served the accused, and one to be kept by the commanding officer preferring the charges.
>
> Any accused member of the department shall have at least a twenty-four hour notice of his trial board hearing and shall be furnished with a copy of the charges and specifications. The officer serving the charges and notice shall obtain the accused member's signature on D.P.D. 227, add his own signature, the date and time of service, and return the form to his commanding officer.
>
> When charges are preferred against two or more officers, separate misconduct charges must be prepared for each officer.
>
> No accused shall be tried on joint charges with another member unless for some concerted action in the same offense, and then only by mutual agreement of the board and accused officers."

The Detroit Police Department Manual Chapter 3, Section 28, charges states:

> "Section 28. CHARGES. The charges shall be written in triplicate, one copy to be forwarded to the commissioner through official channels, one to be served the accused, and one to be kept by the commanding officer preferring the charges.
>
> Any accused member of the department shall have at least a twenty-four notice of his trial board hearing and shall be furnished with a copy of the

charges and specifications. The officer serving the charges and notice shall obtain the accused member's signature on D.P.D. 227, add his own signature, the date and time of service, and return the form to his commanding officer."

P.A., Section 5.3364:

§ 5.3364 Tenure dependent on good behavior, efficient service; right to public hearing before discharge, suspension, loss of privileges; burden of proof; appeal; right to counsel; suspension for sake of economy. Sec. 14. The tenure of every one holding an office, place, position or employment under the provisions of this action shall be only during good behavior and efficient service; and any such person may be removed or discharged, suspended without pay, deprived of vacation privileges or other special privileges, by the civil service commission for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office: *Provided, however, No member of any fire or police department within the terms of this act shall be removed, discharged, reduced in rank or pay, suspended or otherwise punished except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions, and all charges shall be void unless filed within 90 days of the date of the violation.*

EXHIBIT C

[23] * * * have been said, I do not dispute that, but that did not occur on the record.

And in order to solve that, for this particular Trial Board, I think we should keep the record on until — on until we — you, Chief Hart, specifically state, you know, "Turn the record off."

Mr. Ramsdale alleged that prior to the last few months, meaning prior to the point that I started running trial boards, everything was furnished to the DPOA, and that's right. CARE Packages would arrive from 1300 Beaubien to the Lippitt law firm, giving away the store. That no longer is the case, that no longer is the rule. I have looked at a labor contract. There's no way in there that we are required to give witnesses' statements, tapes, transcriptions. However, I made available, in the past — by "the past" means since I've been running trial boards — any witnesses' statements that we did have. Members of that law firm have come down to my office, we've gone over the file, and as Mr. Ramsdale correctly states, we've given the summary of the witnesses — what they will testify.

They aren't written records, and we're not going to take our overburdened staff and have them [24] transcribe tapes. We do it primarily by tapes, and we just don't have the personnel. I don't have to tell you how many hours it takes to transcribe a tape.

The Lippitt law firm can take copies of that tape, they can listen to it. If they have the economic ability to transcribe it, fine; they're capable of doing so.

Regards to Mr. Varga's letter in which he cites past practices, that's exactly what it is: past practices. A new order has come, a new day has come. CARE Packages will no longer be sent to Southfield.

There are many items that Mr. Ramsdale has alluded that he has no control over getting certain witnesses. On some of them I dispute, on some of them I don't, but I intend to address myself seriatim to each.

Firstly, Informant H4. I personally don't know who Informant H4 is, though I do think we can look it up in Internal Affairs and, if possible, locate that person.

Mr. Ramsdale: I said we would bring H4.

Mr. Taft: You would bring H4, okay. Do you have the name of H4?

EXHIBIT D

Mr. Taft: Absolutely.

Mr. Ramsdale: To also give him the opportunity of securing evidence in his behalf.

Mr. Taft: Yeah, but this evidence is not in the control of the Police Deaprtment, it is not related to a time period that these charges occurred in.

We're attempting to try the Cleveland Penn matter and the entire credibility of Charles Williams, et cetera, to show the bias of the Wayne County Prosecutor. I'm familiar with that. I know the route, I've been over it before, and I'm merely saying that we are not going to prepare your defense for you. I don't think you'd want us to. And if you can secure those documents, by all means do, and attempt to have them admitted over my objection.

But to help prepare a defense that I find to be objectionable, to begin with —

Mr. Ramsdale: Then what you're saying is, then, the Department will not even send a subpoena and a request to the federal authorities on a raid that was co-sponsored with the Detroit Police Department.

Mr. Taft: I would be happy to send the subpoena to the federal authorities. If that will satisfy you, we will send the subpoena to the federal authorities.

EXHIBIT E

Q Who'd you kill? A. A guy named Cleveland Penn.

Q Cleveland — Penn? A Penn, right.

Q How did that happen?

EXHIBIT F

[207] * * * I'm abridging any Fourth Amendments rights. And merely I asked, "Would you be willing"; but I did not order nor did I say, "It is for the DPOA." I said, "For the defense and for the Detroit Police Department."

Mr. Taft: I don't think you could speak for the Detroit Police Department, Mr. Ramsdale.

Mr. Hart: I seemed to me the witness answered the question. What did you say if he asked you if you would —

The Witness: No.

Mr. Hart: The answer is no.

Q (By Mr. Ramsdale): When did you — You mentioned that you were in the business of selling drugs, am I correct? A. Right.

Q About what time, what year did you start in the business of selling drugs? A It was some time in '72, around the end of '72.

Q How did you get into that business? A I just started, that's all.

Q Did you apply for an ad in the paper or what?
A No. Just this place I had been going to, and one day I just decided to buy me some and try to sell it.

Q Okay.

[208] So about 1972 you started?

A Right.

Q How did — Did you branch out from merely selling to people, did you develop your own dope pads? What did you do? A Oh, yeah, eventually I did.

Q Where did you have your dope pads? A Where?

Q Yeah. A Well, I started when I was living on Tyler, then I got a place on, I think it was Twelfth, and then on Chicago.

Q So over the period of time, how long did you have the Tyler dope pad? A Might have been about three or four months, something like that.

Q Three or four months? A Yeah.

Q When did you have that pad? A From the time I started on up to around October or November, somewhere around there.

Q And when did you start? A When did I start?

Q Um-hum. A Start what?

EXHIBIT G

[211] A I have no idea. I can't even estimate it.

Q Okay. Before you got into the dope business, what was your vocation?

A The last job I had was working at Chrysler's.

Q And how long a period of time did you have that?

A About two years. I chased a few accidents, too.

Q What do you mean by "chased a few accidents"?

A You all call it ambulance chasing.

Q Who's "you all" call it? A That's what the people call it, ambulance chasing.

Q Okay. So you chased ambulances?

A No, I was chasing accidents. I ain't never drove in behind an ambulance.

Q How would you chase an accident? A Well, I had a little AM and FM radio with a police band on it.

Q And then you would go to various accidents, and what would you do? A What has this got to do with this here? That matter is before the Grand Jury, and I don't know if I can talk about it.

EXHIBIT H

[231] (Discussion off the record.)

Q (By Mr. Ramsdale): Mr. Williams, did you make one statement regarding what you did with the shotgun and the 30/30 rifle at Grand Jury, and in another statement at the preliminary exam state a different statement at your trial? A Yes, I did.

Q Therefore, you lied when you were before the Grand Jury and — A I guess so.

Q — at the preliminary exam? A Right.

Q Am I correct? A Right.

Q Did you ever talk to a crew of Lieutenant Bennett, or Lieutenant Bennett's crew on March 28th, 1972, and that crew would be composed of Police Officer Sanders, Police Officers Gate, Day and Cobert? A Yeah, I believe that was the time when I was subpoenaed, I think; if I got the date right.

Q Where did you meet them?

Mr. Taft: Objection

Again, unless I mistook the date, it's March '73 that we're talking about, and I'd like to have some sort of a foundation as to where we're going.

EXHIBIT I

THE FULLERTON FRIENDLY BLOCK CLUB
(Between Lawton and Wildemere)

June 14, 1972

Sergeant Davis
10th Police Precinct
12000 Livernoise
Detroit, Michigan 48206

Dear Sir,

We, of the Fullerton Friendly Block Club (Fullerton between Lawton and Wildemere) wish to sincerely thank you and your department for ridding our neighborhood of some of its narcotic houses. We are hard working people who have invested in homes in this area and are trying very hard to keep the neighborhood respectable. Most of us have children whom we do not wish to be exposed to such undesireable things as dope houses and their clientel.

We, therefore, wish to thank you again for your help in helping us to keep our neighborhood in tact.

The Fullerton Friendly Block Club

Mrs. J. Stewart, President
Mrs. M. Garrison, Corresponding Sec'y
/s/ M. Garrison

Sgt. Rudy Davis
Sgt. Warren Coleman
Patr. Robert Mitchell
Hugh Patterson
Clyde Sherrod
Craig Pollard
Leo Grabowski
Henry Meadows
Robert McGhee

EXHIBIT J

CITY OF DETROIT
Roman S. Gribbs, Mayor
Department of Police
Detroit, Michigan, 48231

March 26, 1973

Patrolman Henry Meadows
Precinct #10
Detroit Police Department
Detroit, Michigan

Dear Patrolman Meadows:

I thought you might like to have the enclosed copy of a letter that was sent to Commissioner John F. Nichols from Mr. Walter O. Cowan, Sr.

It is pleasing to know that your service is such as to merit this kind of expression of praise.

Thank you for your good work!

Sincerely,

/s/ Anthony Bertoni
Anthony Bertoni
Superintendent

AB:lp

00953

4610 W. Outer Drive
Detroit, MI 48235

March 16, 1973

Inspector Robert Moug
1200 Livernois
10th Precinct
Detroit, MI 48204

Dear Inspector Moug:

I would like to thank you and your department for allowing Mr. Craig Pollard and Mr. Henry Meadows visit our Drug Seminar held March 14, 1973. Their lectures and demonstrations were excellent as they demonstrated a thorough awareness of todays drug problem. The students found them informative as they were able to relate background information and their own personal experiences concerning drug abuse in todays communities. Both are fine officers and a credit to your department.

Thank you again.

Yours truly,

/s/ Walter O. Cowan
Walter O. Cowan, Sr.
Biology teacher

cc: Commissioner John Nichols

EXHIBIT K

CITY OF DETROIT
Roman S. Gribbs, Mayor
Depatment of Police
Detroit, Michigan 48231

June 20, 1972

Mrs. J. Stewart &
Mrs. M. Garrison
The Fullerton Friendly Block Club
3034 Fullerton
Detroit, Michigan 48238

Dear Mrs. Stewart & Mrs. Garrison:

Thank you for your thoughtful letter praising the service of Inspector Robert A. Moug, Sergeant Rudy Davis and Warren Coleman, Patrolman Robert Mitchell, Hugh Patterson, Clyde Sherrod, Leo Grabowski, Henry Meadows, and Robert McGhee.

It is gratifying to know that concerned citizens, such as yourself, are pleased with the work rendered by our officers.

I shall convey your compliments to them and will add my own commendation as well.

It was kind of you to write.

Sincerely yours,

Charles H. Gentry
Superintendent

CHG:ig

EXHIBIT L

Judge JOSEPH E. MAHER

1. Rates Meadows and Pollards' reputation for truth and honesty as very excellent officers. My opinion of them, personal opinion? . . . "I certainly would." (Believe them if they testified under oath). Pg. 365.
2. "From my connection with them and the time I have met them and the conversation I had with them I certainly would" . . . (Believe them.) (Pg. 365)

EXHIBIT M

CIVIL SERVICE COMMISSION

County of Wayne, Michigan
628 City County Bldg. 2 Woodward Avenue
Detroit, Michigan 48226 965-2750
Member of the Public Personnel Association

December 9, 1974

Mr. Henry Charles Meadows
16530 Indiana
Detroit, Michigan 48221

Dear Mr. Meadows:

In considering the application you submitted for the Police Officer — 1693 o.c. examination, the Civil Service Commission has reviewed your past employment history. This investigation has revealed a record of unsatisfactory previous employment of such a nature as to demonstrate unsuitability for County employment in this class. Therefore, your application has been rejected.

Under the provisions of the Rules and Regulations of the Civil Service Commission any person who wishes to appeal the rejection of his application to the Commission must make such appeal in writing.

Very truly yours,

Civil Service Commission
/s/ Thomas Bednarski
Thomas Bednarski
Personnel Technician

CS-669
Rev. 5/62

EXHIBIT N

December 17, 1974

Mr. R. Laidlaw,
Sr. Personnel Representative
Blue Shield Personnel
Detroit, Michigan

Re: Henry C. Meadows — Employment Application

Dear Sir:

Several months ago my wife, Claudia Meadows, had a telephone conversation with you in reference to employment for myself. You suggested that I complete an employment application and return it to Blue Shield personnel, at which time I did. As of this writing date I have not heard from Blue Shield personnel.

I am applying for a Security Guard position. I believe that I am qualified for this position because of my experience and education which will enable me to do the job efficiently.

Enclosed, I have completed another application for employment along with attachments. Any consideration given to me in this matter will be greatly appreciated.

Thank you,

/s/ Henry C. Meadows
Henry C. Meadows

EXHIBIT O

16350 Indiana Street
Detroit, Mich. 48221

Mr. Albert Saferstein
Admin. Super. Personnel Records
Detroit Personnel Department
City County Building
Detroit, Michigan 48226

Re: Henry C. Meadows — Correctional Officer, #1189

Dear Sir:

On Aug. 30, 1977 at approx. 11 am I had a oral interview with a member of the personnel staff for the position of Correctional Officer, Exam. #1189 with a Lt. Oliver, of Dehoco present. As of this writing date I have not heard from the City of Detroit Personnel Department.

I applied for this position because I believe that I am qualified and because of my experience and Education which will enable me to do the job effeciently. Lt. Oliver stated at my oral interview that (certain other thing would be taken into consideration).

I hereby request that the City of Detroit Conduct a search of its files to determine if it has "Certain other things" mentioned at my oral interview. If the City of

Detroit Personnel Department is able to retrieve a file of my oral interview, I would appreciate receiving a copy of all information contained in said file which is not exempt from disclosure under the provisions of the Privacy Act of 1974, Public Law 93-579.

To assist you in your search, I have indicated below my full Name, Date of Birth, Place of Birth, Home Address, Date of Oral Interview, and Exam. Number.

Sincerely yours

/s/ Henry C. Meadows
Henry C. Meadows

Henry Charles Meadows
May 16, 1939
Americus, Georgia
16530 Indiana Street Det., Mich.
Aug. 30, 1977 — Approx. 11am
Exam. Number 1189

PLAINTIFFS SECOND AMENDED COMPLAINT FOR DAMAGES

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed October 17, 1979)

(Pollard and Meadows v. City of Detroit, et al. No. 78-72724)

Now comes Plaintiffs, Craig Pollard and Henry Meadows, herein, by and through their attorneys, Ashford, Cannon, Lumumba and Shakoor and files this Second Amended Complaint as follows:

1. That your Plaintiffs reallege and incorporate by reference paragraphs one (1) through six (6) without change.

2. That your Plaintiffs amend paragraph seven (7) as follows:

That this action arises under the Constitution of the United States, the Fourteenth Amendment due process clause; The Constitution of the State of Michigan, Article 1, § 17, Article 11, § 5 and the Civil Rights Act, § 1983, Title 42 USC; this matter in controversy exceeds, exclusive of interest and cost the sum of Ten Thousand Dollars ($10,000) and this Court has jurisdiction by reason of Title 28 USC § 1331(a) and § 1343.

3. That your Plaintiffs reallege and incorporate by reference paragraphs eight (8) through fifteen (15) without change.

4. That your Plaintiffs amend paragraph sixteen (16) as follows:

That on May 24, 1973 your Plaintiffs, Craig Pollard and Henry Meadows, were suspended from the performance of their duties as police officers and denied all benefits, wages as well as fringe benefits without notice as to the specific departmental rule or regulation allegedly violated and without an immediate hearing on the valldity of the suspension in violation of the due process clause of the Fourteenth Amendment to the United States Constitution; the Civil Rights Act, § 1983, Title 42 USC, The Constitution of the State of Michigan, article 1, § 17; The Public Act 78, § 5.3364 of the State of Michigan, pursuant to State administrative action and official action of the City of Detroit and its police department, detailed more fully hereinafter in breach of their employment contract with the City of Detroit and the Detroit Police Officers Association, denying your Plaintiffs their civil and constitutional rights, the protections afforded them by the Departmental rules and regulations in force on the 24th of May, 1973 in the following particulars:

(a) Plaintiffs reallege and incorporate by reference paragraph 16(a)(1) and (2)

(b) Plaintiffs reallege and incorporate by reference paragraph 16(b)

5. Your Plaintiffs reallege and incorporate by reference paragraph seventeen (17) without change.

6. Your Plaintiffs amend paragraph 18 as follows:

(18) That these charges of October 18, 1974 were a completely new set of charges preferred against your Plaintiffs after they had been acquitted of all charges forming the basis of the original indictment of May 24,

1973 which also was the basis of their original suspension of May 24, 1973 from the Detroit Police Department.

7. That your Plaintiffs reallege and incorporate by reference paragraph nineteen (19) without change.

8. That your Plaintiffs reallege and incorporate by reference paragraph twenty (20).

9. That your Plaintiffs amend paragraph twenty-one (21) as follows:

(21) That then Chief Phillip Tannian acted beyond the scope of his authority, acted arbitrarily and capriciously in summarily terminating your Plaintiffs and further continuing the termination of all pay and benefits in total disregard of the Detroit City Charter which authorized, per § 7-1107, the Chief of Police to implement summary discipline for a minor offense only. The charges against your Plaintiffs were by no means minor offenses.

10. That your Plaintiffs amend paragraph 22 as follows:

(22) That your Plaintiffs thereupon appealed this decision to the Police Department Trial Board, composed of William L. Hart, Chairman of the Board, Inspector Richard Dungy and Inspector Rufus Anderson. After the Board's adverse ruling an appeal was taken to an Arbitration Panel, which set aside all charges relative to the September, 1972 incidents because of procedural defects of a fundamental nature. (See Exhibit (1)) The matter was then remanded to the Trial Board for reconsideration of the penalty in each case.

11. That your Plaintiffs amend paragraph twenty-three (23) as follows:

(23) That your Plaintiffs and their attorneys were advised by a notice dated November 1, 1976 (See Exhibit 2) that the Trial Board was being reconvened November 12, 1976. Subsequent to the receipt of this notice your Plaintiffs and their attorneys were phoned by Barbara J. Mitchem, Sergeant, Officer in Charge of Disciplinary Administrative Section, that they were not allowed to be present during this reconvened Trial Board. During this reconvened "Trial Board" the dismissal of your Plaintiffs was reaffirmed.

12. That your Plaintiffs reallege and incorporate by reference paragraphs twenty-four (24) through twenty-six (26) without change.

13. That your Plaintiffs amend the Prayer for Relief of Count I of both Plaintiffs as follows:

WHEREFORE , Plaintiff Craig Pollard prays for reinstatement to his former position as police officer; for actual damages in the amount of One Hundred Forty Thousand Dollars ($140,000) for loss of salary, cost of living allowances, benefits and interest, Two Hundred Fifty Thousand Dollars ($250,000) in actual damages for violation of constitutional and civil rights; and Two Hundred Fifty Thousand Dollars ($250,000) in punitive damages plus attorney fees, cost and interest so wrongfully incurred.

WHEREFORE, Plaintiff Henry Meadows prays for reinstatement to his former position as police officer; for actual damages in the amount of One Hundred Forty-Five Thousand Dollars ($145,000) for loss of salary, cost of living allowances, benefits and interest; Two

Hundred Fifty Thousand Dollars (250,000) in actual damages for violation of constitutional and civil rights; and Two Hundred Fifty Thousand Dollars ($250,000) in punitive damages plus attorney fees, cost and interest so wrongfully incurred.

COUNT II

CONSPIRACY TO DEPRIVE PLAINTIFFS OF THEIR CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW.

14. Plaintiffs reallege and incorporate by reference paragraph twenty-seven (27) of their Complaint without change.

15. Plaintiffs amend paragraph twenty-eight as follows:

(28) That from about September 6, 1972 to the filing of this amended complaint, the Detroit Police Department, the City of Detroit, William L. Hart, Phillip G. Tannian, George Bennett and other unnamed agents of the same conducted an ongoing conspiracy against your Plaintiffs Craig Pollard and Henry Meadows to deny them the benefits and protections afforded by established departmental rules and regulations, the protections due them from the contract with the City of Detroit and the Detroit Police Officers Association, the City Charter of the City of Detroit, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Article I, § 17 of the Constitution of the State of Michigan, the laws and statutes of the State of Michigan in violation of 42 USC § 1983 and § 1985(3) because they belong to that class of police officers who because they refuse to take part in official wrongdoing

are stigmatized and subjected to severe and discriminatory departmental scrutiny and discipline and in the further particulars as follows:

(a) Plaintiffs reallege and incorporate by reference sub paragraphs 28(1) through (8).

(b) Plaintiffs amend paragraph 28 by adding the following sub paragraphs:

28(9) Late 1971 or early 1972 Patrolman Craig Pollard talked to Harold Johnson (Patrolman) on three separate occasions about being recruited for a special unit. Pollard talked to George Bennett twice about the possibility of working for him on the special unit. Conversations by Bennett specifically detailed duties and responsibilities, which included falsifying information, planting evidence and a promise of reward for results. Pollard told Bennett he would contact him later; and had no further contact with Bennett.

(10) December 8, 1972 — George Bennett, Patrolmen Maurice Gates, James Crawford and District Inspector Bullock went to the Tenth Precinct and confiscated narcotics from various places in the stationhouse including the #10 PNV Office. Officers Gates and Crawford approached Plaintiff Craig Pollard's wife, Mrs. Pollard, on her job after leaving the 10th Precinct station and threatened her concerning officer Pollard's possibility of going to jail because of his involvement in illicit narcotics trade.

(11) One day between January 2nd and 7th, 1973, Officer James Crawford talked to Mrs. Pollard again on her job concerning the activities of Officer Pollard.

Crawford then arranged (through Mrs. Pollard) a meeting with Officer Pollard at his home at approximately 11:30 p.m. this same evening and has an hour and a half talk with Pollard. During the talk Crawford told Pollard of the plot by Bennett (to make an example of Pollard for not aiding him) and before the month of January, 1973 was over, Pollard would lose his job and be in jail.

Further, Crawford told Pollard that his only chance for saving himself was to go and get immunity from Bennett. The next day after talking with Crawford, Pollard verbally relates the contents of the incident to Sergeant Rudy Davis and Inspector Robert Moug at the 10th Precinct.

(12) In early February, 1973, members of the 10th Precinct Narcotic Unit had a conference with Inspector Moug; subject of the conference was to voice objection about the tactics used by the investigators of the *Commissioner's Squad – Detail 318* — by intimidating members of Pollard's and Meadows' family concerning their probe.

(13) On May 14, 1973, Patrolman Pollard talked with Councilwoman Erna (sic) Henderson via telephone and related the contents of James Crawford's conversation of January, 1973, plus the fact that the *Commissioner's Squad – Detail 318* investigators were harassing Pollard's family.

Councilwoman Henderson stated she would introduce a resolution on the Common Council floor calling for an investigation into allegations of improper investigating techniques used by George Bennett on Patrolman Pollard. Pollard promised to be present at the Common Council Chamber the next day for the introduction of the resolution.

(14) On May 15, 1973 Patrolman Pollard talked to the following Detroit Police Department supervisors in order to obtain permission to appear before the Common Council:

1. Sergeant Daniel Durack
   10th Precinct
2. Inspector Robert Moug
3. District Inspector Francis Arbanas
4. Commissioner John Nichols

Commissioner Nichols persuaded Pollard not to appear before the Common Council or make any statements to the press concerning the matter. Nichols told Pollard to tell his story in Court if it became necessary.

(14) Evening of 23 May 1973, Patrolmen Meadows and Pollard notified via telephone by Inspector Robert Moug who related the following:

1. Pollard and Meadows were indicted by a Grand Jury and were suspended from the Department.
2. Where Pollard and Meadows were to report the next morning for service of the Grand Jury Indictments and;
3. Stated they would only be suspended until their court case was resolved then they could be reinstated back into the Department.

16. That your Plaintiffs reallege and incorporate by reference without change their Prayer for Relief in Count II of their Complaint.

COUNT III

DAMAGES DUE TO LIBELOUS AND SLANDEROUS PUBLICATIONS

17. Your Plaintiffs reallege and incorporate by reference paragraphs thirty (30) through their Prayer for Relief without change.

COUNT IV

CONSEQUENTIAL AND SPECIAL DAMAGES FOR LOSS OF WIFE'S SOCIETY AND SERVICES AND FOR MEDICAL EXPENSES

18. Your Plaintiff Henry Meadows realleges and incorporates by reference paragraph thirty-six (36) through his former Prayer for Relief without change.

Ashford, Cannon, Lumumba & Shakoor
By: /s/ James Cannon Jr.
James Canon, Jr. (P28005)
Attorney for Plaintiffs
11000 West McNichols, #122
Detroit, Michigan 48221
345-5900

Dated: October 15, 1979

(EXHIBIT 1)

INTERIM AWARD

The findings and penalty of the Trial Board are modified as follows:

1. All charges and specifications relative to the September incidents are not sustained. The decision of the Trial Board sustaining them is set aside for procedural defects of a fundamental nature as set forth above.

2. Action of the Trial Board in sustaining the December 1, 1972 charges and specifications is affirmed by the majority vote of this Board of Arbitrators.

3. The cases of Pollard and Meadows are remanded to the Trial Board for reconsideration of the penalty in each case in light of our narrowing of the findings of guilt.

4. Upon the issuance of a supplemental decision and order of discipline by the Trial Board, the Association may again bring this matter before this Board of Arbitrators for review of the penalty as to its fairness.

Board of Arbitrators

/s/ James R. McCormick
James R. McCormick, Chairman
/s/ James Bannon
James Bannon, Member
/s/ David R. Watroba
David Watroba, Member
(I dissent on Award #2.)

(EXHIBIT 2)

INTER-OFFICE MEMORANDUM

November 1, 1976

Commanding Officer, Tenth Precinct

Subject: RECONVENING OF POLICE TRIAL BOARD IN THE MATTER OF
(DISMISSED) POLICE OFFICER HENRY C. MEADOWS, FORMERLY OF THE 10TH PRECINCT
(DISMISSED) POLICE OFFICER CRAIG J. POLLARD, FORMERLY OF THE 10TH PRECINCT
DISCIPLINE FILE 740066

Pursuant to directive of the Chief of Police, the Police Trial Board in the above entitled matters is scheduled to reconvene at 9:00 A.M., Friday, November 12, 1975, in Room 516, of the Veterans Memorial Building, 151 West Jefferson. By copy of this communication, addresses (sic) are placed on notice to take appropriate action.

Commending (sic) Officer, Tenth Precinct, is requested to inform (Dismissed) Officers Meadows and Pollard of the scheduled reconvening date. Further, when DPD 227 is executed, the bottom portions of the forms are to be immediately returned to Disciplinary Administration Section, Room 509, Veterans Memorial Building, 151 West Jefferson.

Any request for claification of the contents of this directive should be made to Legal Advisor Geoffrey Taft, Bell phone: 224-4088.

By Direction of Chief of Police
/s/ Barbara J. Mitchem
Barbara J. Mitchem, Sergeant
Officer in Charge
Disciplinary Administration Section

WLH/BJM:ng

cc: Deputy Chief, Western Operations
Legal Advisor Geoffrey Taft, Internal Affairs Section
Detroit Police Officers Association
Lippitt, Perlove, Varga and Zack Law Firm
(Dismissed) Police Officer Henry C. Meadows
(Dismissed) Police Officer Craig J. Pollard

MEMBERS OF THE BOARD

Chief of Police William L. Hart, Chairman of the Board
Commander Richard L. Dungy, Special Operations Division
Commander Rufus Anderson, Fourth Precinct

COMPLIMENTARY COPIES

Ms. Rosalee House, Chief's Staff (RE: Chief's File C-3729)
Deputy Chief, Internal Controls Bureau (RE: Chief's File C-3729)

PLAINTIFFS' THIRD AMENDED COMPLAINT FOR DAMAGES

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed February 15, 1980)

(Pollard and Meadows v. City of Detroit, et al. No. 78-72724)

Now comes plaintiffs Craig Pollard and Henry Meadows, herein by and through their attorneys, Ashford, Cannon, Lumumba & Shakoor and in support of this, their third amended complaint, says as follows:

1. That plaintiffs, Craig Pollard and Henry Meadows, reside in the City of Detroit, County of Wayne, State of Michigan, and that they are both citizens of the United States.

2. That Defendant, the Detroit Police Department is the law enforcement agency of the City of Detroit, in the County of Wayne and in the State of Michigan.

3. That the Defendant, the City of Detroit, is a municipal corporation, duly organized and existing under the laws of the State of Michigan and is situated in the County of Wayne.

4. That the defendant, William L. Hart, is the duly appointed Chief of Police for the Detroit Police Department, and at all times mentioned herein was acting in such official capacity as agent for the Detroit Police Department and the City of Detroit.

5. That the defendant, George Bennett, was the duly appointed Deputy Chief of Police for the Detroit Police

Department and at all times mentioned herein was acting in such official capacity as agent for the Detroit Police Department and the City of Detroit.

6. That the defendant, Phillip G. Tannian was the duly appointed Chief of Police for the Detroit Police Department and at all times mentioned herein was acting in such official capacity as agent for the Detroit Police Department and the City of Detroit.

7. That this action arises under the Constitution of the United States, to wit, the due process clause of the Fourteenth Amendment; The Civil Rights Act, Title 42 USC 1983; The Constitution of the State of Michigan, to wit: Article I § 17 and Article II, § 5 and the common law of the State of Michigan. This matter in controversy exceeds, exclusive of interest and cost, the sum of Ten Thousand Dollars ($10,000) and this Court has jurisdiction by reason of Title 28 USC 1331(a) and 1343.

8. Plaintiff Craig Pollard was first employed by the defendant City of Detroit Police Department on September 9, 1970 and was continuously in said defendant's employ holding the position of a police officer until he was unlawfully suspended effective May 24, 1973. (See Exhibit A)

9. Plaintiff Henry Meadows was first employed by the defendant City of Detroit Police Department on November 27, 1967 and was continuously in said defendant's employ holding the position of a police officer until he was unlawfully suspended effective May 24, 1973. (See Exhibit B)

10. That at the time of his suspension on May 24, 1973, plaintiff Craig Pollard was receiving and was entitled to continue to receive a salary of $14,888; in 1974 he was entitled to receive a salary of $15,938; from 1975

through 1978, but for his wrongful discharge to be described more fully hereinafter, he was entitled to a salary of $17,292 and in addition, raises of five percent in 1974 and four percent in 1975 plus cost of living allowances in July, 1974 of $188, in September of 1974 of $288 and from 1975 through 1978 of at least $479 per year and health care coverage, life insurance and other amenities and benefits and protections provided to a person employed as a Detroit Police Officer.

11. That at the time of his suspension on May 24, 1973, plaintiff Henry Meadows was receiving and was entitled to continue to receive a salary of $15,939; from 1975 through 1978, but for his wrongful discharge to be detailed hereinafter, he would have received a salary of $17,292; in 1974 he was entitled to a salary of $16,166; and in addition, raises of five percent in 1974 and four percent in 1975 plus cost of living allowances in July, 1974 of $188, in September, 1974 of $288 and from 1975 through 1978 of at least $479 per year; health care coverage, life insurance and other amenities, benefits and protections provided to a person employed as a Detroit Police Officer.

COUNT I

DEPRIVATION OF PLAINTIFFS' CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE MICHIGAN CONSTITUTION.

12. Plaintiffs reallege paragraphs 1 through 11 as set forth above and incorporate the same herein by reference.

13. Both plaintiffs were suspended May 24, 1973. At that time, your plaintiffs were legitimately entitled to

continue to receive all pay and benefits afforded them as employees of the defendant municipality until such time as they were given a hearing regarding the termination of said pay and benefits.

14. That your plaintiffs were denied their "property interest" in continuing to receive their pay and other benefits without due pocess of law as no hearing was ever held prior to the termination of said pay and other benefits.

15. That during the period of their suspension from May 24, 1973 through October 28, 1974 and thereafter, your plaintiffs, as public employees, were denied their right to "liberty" as they were denied their freedom to take advantagae of other employment opportunities by the defendant City of Detroit and agents of its police department without due process of law.

16. Plaintiff Henry Meadows applied for jobs with the following prospective employers with his being denied employment opportunities for the reasons as stated without having had any formal hearing regarding the truth or falsity of the allegations made:

(a) Wayne County Civil Service Commission — job denied because of information received from the Detroit Police Department indicating he was unfit and unsuitable for such employment as he was involved in narcotic trafficking.

(b) Blue Cross-Blue Shield of Michigan — job denied because of job reference information received from the Detroit Police Department alleging unfitness and unsuitability and that Meadows had been involved in narcotics.

(c) State of Michigan Department of Corrections job denied as corrections officer due to job reference

from Detroit Police Department indicating involvement in narcotics and poor job history.

(d) General Motors Corporation — job as a security officer denied after Meadows had been hired due to fact that Detroit Police Department subsequently informed this employer that Meadows had been involved in narcotics and that his job status with the Detroit Police Department was subject to change as there was a possibility that he would be reinstated.

17. Plaintiff Craig Pollard applied for a job with the General Motors Corporation during the period set forth above and was hired as a security officer, but as with plaintiff Meadows upon arriving to begin his first day of work was informed by this employer that because it had received information from the Detroit Police Department indicating his involvement in narcotic trafficking and the possibility that he would be reinstated, he was denied a job. This was prior to his having had a formal hearing regarding the truth of the matters alleged.

18. That your plaintiffs further liberty interest, to wit, their good names, reputations, honor and integrity; their standings and associations in the community were seriously damaged by the named and unnamed agents of the defendant City of Detroit without having had any formal hearing regarding the truth or falsity of those statements prior to their dissemination. The defendant City of Detroit's named and unnamed agents allege that they had committed bribery, were involved in narcotic trafficking and other illegal drug related activities. These allegations were disseminated through the following mediums and publications prior to their first formal hearing on the departmental charges forming the basis of

those allegation and the decision rendered in that hearing on June 5, 1975:

(a) The Detroit News

(b) The Detroit Free Press

(c) The Michigan Chronicle

(d) Prospective employers

(e) Inter-Departmental publications within the Detroit Police Department

(f) Within other departmental hearings regarding the cases of other police officers

(g) Within other departments of the City of Detroit

(h) Directly throughout the community by its agents within which your plaintiffs lived and worked.

19. That thereby the defendants meant and intended to mean, and were understood by the readers and those who received such publications and pronouncements that your plaintiffs were engaged in the above-mentioned criminal activities. That such words and/or statements at the time they were made were not substantiated as a result of any formal hearing regarding the same.

20. That the results of the first formal hearing regarding the charge forming the basis of plaintiffs' original suspension, occurred in the Recorder's Court for the City of Detroit. In September of 1974 your plaintiffs were acquitted of all such charges which led to their suspension. Your plaintiffs were then not reinstated to their former positions notwithstanding the fact that no charges were pending against them.

21. Your plaintiffs were then charged on October 18, 1974 with violation of departmental rules of the Detroit

Police Department. (See Exhibit C) No formal hearing was held on these charges until a police Trial Board convened on May 19, 1975 and then no decision was rendered until June 5, 1975. (See Exhibit D)

22. That all of your plaintiffs' allegations contained herein in paragraphs 8 through 16 occurred during the period May 24, 1973 through June 5, 1975 and thereafter.

23. That your plaintiffs were further denied due process of law as they were denied adequate and timely notice by the Detroit Police Department of the department rules they had allegedly violated. This denied them an adequate and fair opportunity to defend against those charges.

24. That the departmental charges first brought against your plaintiffs were on or about October 18, 1974. The alleged factual basis for these charges occurred on certain dates in September and December, 1972, two years prior to bringing said charges.

25. That due to this failure to provide timely notice your plaintiffs were unable, in a meaningful way, to prepare and defend against those charges. The charges differed substantially from the initial charge against them on May 24, 1973 in that they were the first notice that the department was taking departmental action against them and the alleged factual basis supporting those charges differed substantially from the criminal charges they defended against in Recorder's Court.

26. As a result they had no meaningful or fair opportunity to prepare a defense against those charges and their constitutional rights were substantially prejudiced thereby.

WHEREFORE, both plaintiffs each claim compensatory damages in excess of Ten Thousand Dollars ($10,000);

punitive damages in excess of Ten Thousand Dollars ($10,000); plus interest, attorney fees and cost for so wrongfully being compelled to bring this action.

COUNT II

DEPRIVATION OF CIVIL RIGHTS UNDER 42 USC 1983

27. That your plaintiffs reallege and incorporate by reference paragraphs 1 through 26 as though alleged fully herein.

28. That defendant Phillip Tannian, while Chief of Police, on or about October 28, 1974 illegally and under color of State and local law, denied your plaintiffs due process of law.

29. That on the aforesaid date, defendant Phillip Tannian conducted what was referred to as a "Chief's Hearing." At this hearing he discharged your plaintiffs on the basis of the new charges and specifications referred to in exhibit C attached hereto, effective May 24, 1973.

30. That this discharge terminated all pay and benefits and all other "property interest" that plainiffs had as police officers.

31. That this hearing was in fact not a hearing as no testimonial or documentary evidence was offered against your plaintiffs. Your plaintiffs were not allowed to defend any charges preferred against them. The defendant former chief Phillip Tannian only read the charges against your plaintiffs and then summarily discharged them and further ordered that the discharge take effect on May 24, 1973 and that plaintiffs would forfeit any and all pay and other fringe benefits they were entitled to from that date.

32. That defendant Phillip Tannian then caused a further denial of their right to "liberty" by disseminating information from his office tending to show that your plaintiffs were guilty of criminal wrongdoing seriously damaging their standing and association in the community.

33. That these statements and publications were wholly and completely false and unsubstantiated inasmuch as no formal hearing was held regarding the truth or falsity of said charges.

34. That defendant George Bennett, while acting pursuant to State and local government authority and in his capacity as a law enforcement officer, committed or caused to be committed the following, effectively denying your plaintiffs due process of law:

(a) Engaging in discreet tactics during the period 1/72 through 6/5/75 to subvert the good name and reputation of your plaintiffs by directly or through his agents on detail 318 contacting your plaintiffs' neighbors and prospective employers advising them that plaintiffs were involved in criminal activities. These tactics deprived plaintiffs of their liberty by failing to protect their good name, reputation, honor and integrity and adversely affecting their freedom to take advantage of other employment opportunities.

(b) Engaging in further illegal activities causing to be published in departmental and news publications, information clearly suggesting the plaintiffs' criminal culpability in the area of narcotic trafficking prior to any hearing which would have determined the truth or falsity of the allegations.

35. That defendant William Hart, while deputy chief and after he became Chief of Police denied your plaintiffs a meaningful hearing by sitting as chairman on

the Trial Board which adjudicated the charges against your plaintiffs. That no deputy chief or chief of police has ever sat on a police Trial Board to review a decision of the chief of police. Such an action patently denied your plaintiffs' right to a fair and impartial hearing and further denied them equality of treatment.

36. That defendant William Hart further denied your plaintiffs' right to a fair hearing by appointing Inspector Richard Dungy to sit as a member of the Trial Board ignoring the fact that Inspector Dungy assisted in the investigation of your plaintiffs' cases and further ignoring the fact that he offered testimony in Recorder's Court based on his knowledge and participation in the investigation of your plaintiffs and other police officers. This worked to deny your plaintiffs' right to a fair impartial hearing within the meaning of the Fourteenth Amendment to the United States Constitution and further denied them equality of treatment inasmuch as no investigating officer is allowed to sit, nor has sat as a member of a Trial Board.

WHEREFORE, both plaintiffs pray for reinstatement to their former positions as police officers, compensatory damages in excess of (Ten Thousand Dollars ($10,000); punitive damages in excess of (Ten Thousand Dollars ($10,000); attorney fees and costs so wrongfully incurred.

COUNT III

37. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 36 as set forth above.

38. Plaintiffs bring this action under this Court to recover against defendants for breach of the provisions of a certain collective bargaining agreement between the City of Detroit and the Detroit Police Officers' Association.

39. This agreement effective June 26, 1973 through June 25, 1976 and the one prior and subsequent thereto, covered the period of time that your plaintiffs were employed as police officers, when they were placed on suspended status and thereafter when they were unlawfully discharged as is more spcifically hereinafter alleged.

40. Said agreement was enacted by the defendant City of Detroit for the benefit of the employees in said bargaining unit, and plaintiffs, as members thereof, are accordingly entitled to the benefit of said agreement and to enforce the provisions thereof.

41. As appears from said agreement, Exhibit E, Chapter IX Management Rights and Responsibilities:

(a) Paragraph D thereof provides that "The department reserves the right to discipline and discharge for just cause."

(b) Paragraph F expressly provides that "It is agreed by the department and union that the City of Detroit is obligated, legally and morally, to provide equality of opportunity, consideration and treatment of all members of the department and to establish policies and regulations that will insure such equality of opportunity, consideration and treatment of all members employed by this department in all phases of the employment process. To this end, basic rights and equitities of members are established through the *City Charter*, Executive Orders of the Mayor, Ordinances, and Resolutions of the *Common Council*, and the rules of the department."

Chapter XII Internal Investigative and Disciplinary Proceedings:

(a) Employees accused of violation of Criminal Codes or Ordinances shall be entitled to their full rights under the Federal and State constitutions . . .

(b) Loss of pay resulting from disciplinary proceedings less than a Trial Board will not be implemented under normal circumstances before the 11th day following said proceedings nor during the pendency of any appeal to the Trial Board or to Arbitration.

(c) . . .

(d) Notification of Disciplinary Actions

The steward and union shall be provided, within a reasonable time, written notification of any disciplinary action taken against an employee which results in the addition of official entries to his personnel files. Disciplinary actions which are subsequently reversed shall not be considered.

Chapter XV Adoption by Reference of Relevant Charter Provisions, Ordinances and Resolutions:

The parties further agree that all provisions of the City Charter, Ordinances, and Resolutions of the Common Council, as amended from time to time relating to the working conditions and compensation of patrolmen and patrolwomen are incorporated herein by reference and made a part hereof to the same extent as if they were specifically set forth.

Chapter X and XI establish a grievance procedure, culminating in arbitration, for the presentation,

negotiation and settlement or other final disposition of grievances.

42. As alleged above, both plaintiffs were suspended on May 24, 1973 with this suspended status changed into a discharge status on October 28, 1974 made effective May 24, 1973.

43. As a result of plaintiffs' first suspension on May 24, 1973, they were denied any further pay and fringe benefits. This was a direct violation of Chapter XII § B which clearly indicates that loss of pay would not apply in disciplinary proceedings of less than a Trial Board. Your plaintiffs did not have a Trial Board until May 19, 1975.

44. That the defendant caused a further breach of Chapter IX § F in all the particulars as set forth in Counts I and II of this complaint.

45. The defendants failed to reconvene a Trial Board as ordered by the panel of arbitrators in their opinion and award of June 30, 1976 which was a direct violation of Chapter XI §F of the Collective Bargaining Agreement.

46. The defendant City of Detroit caused a further breach of agreement by and through its former Chief Phillip Tannian who, contrary to the Charter of the City of Detroit, Section 7-1107, held a summary hearing, discharged the plaintiffs and further ordered that they forfeit all pay and seniority rights. His action was not approved by the Board of Police Commissioners as is required by the Charter. (See Exhibit F)

WHEREFORE, your plaintiffs Craig Pollard and Henry Meadows pray for reinstatement to their former positions as Detroit Police Officers, back pay in excess of Ten Thousand Dollars ($10,000) and damages for the loss

of other entitlements, compensatory damages for mental anguish suffered in excess of Ten Thousand Dollars ($10,000), punitive damages in excess of Ten Thousand Dollars, attorney fees and costs plus interest and such other and further relief as the Court deems just and equitable in the premises.

Ashford, Cannon, Lumumba & Shakoor
By: James Cannon, Jr. (P 28005)
Attorney for Plaintiffs
1100 West McNichols, Suite 122
Detroit, Michigan 48221
(313) 345-5900

Dated: January 28, 1980

MEMORANDUM OPINION AND ORDER

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed January 16, 1980)

(Pollard and Meadows v. City of Detroit, et al. No. 78-72724)

This is a dispute between two former Detroit Police Officers and the Department in which plaintiffs claim to have been denied due process of law and to have been injured in other ways. The complaint is in four counts. Count One is brought under 42 U.S.C. § 1983 and Amendment 14 to the United States Constitution and alleges a denial of due process. Count Two also alleges a denial of due process, but here the claim is that the defendants conspired under 42 U.S.C. § 1985(3). Count Three alleges slander. Count Four asks for compensation for damages allegedly suffered by plaintiff Meadows as a result of injuries inflicted upon his wife by the defendants' actions against plaintiffs.

Defendants have moved for summary judgment. Plaintiffs have opposed defendants motion and have moved for permissin to amend the complaint to include a violation of 29 U.S.C. § 185. Since it appears that the dispute between the parties is really over the propriety of the termination of the plaintiffs, the plaintiffs' motion for permission to amend is granted. For the reasons set out below, defendants' motion for summary judgment is granted. The result of these rulings is that plaintiffs may file a complaint raising the issue of improper termination under 29 U.S.C. § 185 and that issue only will continue to trial.

Counts One and Two of the complaint as it now exists are based on the constitutional guarantee to due process of law. A thorough reading of the complaint has convinced the court that while there are a number of substantial disagreements between the parties, none of them involves due process of law. The termination procedure that was used by the defendants involves numerous levels of due process, and despite what may be some missteps in that procedure, this court could not find that the plaintiffs' due process rights have been violated under the facts as pleaded.

Count Three is based on the Michigan common law of slander. Since there is no diversity of citizenship between the parties, there is no independent basis for jurisdiction over this count. The only way that this count can remain before this court would be if this court were to determine that it was ancillary to other counts for which an independent jurisdictional base existed. Because slander involves a number of issues which are unrelated to anything else involved in this lawsuit, the court will not find that it has even ancillary jurisdiction to hear this count.

Similarly, Count Four is a Michigan common law claim over which this court has no independent jurisdiction. Since the issues raised by that count involve injuries to plaintiff Meadows' wife and would bring into this litigation significant additional proofs, the court will not exercise ancillary jurisdiction over it.

All of the allegations in the now existing complaint have been dismissed as a result of this order. Plainiff has until January 25, 1980 to file an amended complaint which raises only the issue of improper termination under 29 U.S.C. § 185.

So ordered.

/s/ Charles W. Joiner
Charles W. Joiner
United States District Judge

Dated: January 16, 1980
Detroit, Michigan

ORDER DENYING MOTION TO AMEND

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed March 27, 1980)

(Pollard and Meadows v City of Detroit, et al. No. 78-72724)

PRESENT: Honorable Charles W. Joiner

This matter having come before the Court, Honorable Charles W. Joiner, United States District Judge presiding, and after reading all pleadings, and after having read all briefs and listening to oral argument by counsel for all parties,

IT IS HEREBY ORDERED:

1. That Plaintiffs' Motion for Order Allowing Plaintiff to Amend Their Complaint, dated January 28, 1980, is denied; and it is further ordered;

2. That judgment shall be entered for all Defendants in the above-captioned civil action dismissing all claims based on Federal law with prejudice.

3. That judgment shall be entered for all Defendants in the above-captioned civil action dismissing the remaining claims based on state law inasmuch as the court lacks subject matter jurisdiction to decide the same.

Dated at Detroit, Michigan, this 27th day of March, 1980.

/s/ Charles W. Joiner
Charles W. Joiner
United States District Judge

Approved as to form:
/s/ James Cannon, Jr.
James Cannon, Jr. (P 28005)
Attorney for Plaintiffs
11000 West McNichols, Suite 122
Detroit, Michigan 48221

JUDGMENT

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed March 27, 1980)

The plaintiffs' motion to amend came on for hearing before the court, the Honorable Charles W. Joiner,

United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered on

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing and that the action be dismissed.

Dated at Detroit, Michigan, this 26th day of March, 1980.

John P. Mayer
Clerk of the Court
by /s/ Sharon M. Bealey
Deputy Clerk

Approved as to form:
/s/ CWJ

ARBITRATORS' OPINION AND AWARD

STATE OF MICHIGAN
BEFORE A
BOARD OF ARBITRATORS

City of Detroit
and
Detroit Police Officers
Association

Re: *Discharge of Officers Pollard and Meadows*

OPINION AND INTERIM AWARD

Board of Arbitrators: James R. McCormick, Chairman
James Bannon, City Delegate
David Watroba, Association Delegate

Representing City: Kermit G. Bailer, Corporation Counsel
Anna J. Diggs, Frank W. Jackson, Assistant Corporation Counsel

Representing Association: Lippitt, Perlove, Varga and Zack,
by Alfred H. Varga, Attorney

Trial Board Hearings: May 19,20,21,22,23,24,27,28, 1975

Arbitration Hearings: February 9 and April 9, 1976 at Detroit, Michigan

Brief filed by Both Parties
Board Executive Meeting: April 9, 1976

Opinion and Interim Award Issued: June 30, 1976

I. STATEMENT OF THE CASE:

This matter came on for hearing before a Board of Arbitrators convened pursuant to the terms of the collective bargaining agreement between the above-captioned parties, for the purpose of reviewing the findings and punishment as determined by a Trial Board in the matters of Patrolmen Craig Pollard and Henry Meadows on June 5, 1975. The Trial Board ordered the dismissal of the said police officers, together with a forfeiture of all pay and benefits effective as of May 25, 1973, that being the date on which they were suspended after having been indicted by a grant jury on various felony charges.

The Board of Arbitrators, having reviewed the Trial Board transcript of nearly one thousand pages, having considered the briefs and oral argument of counsel and having duly deliberated on the case, make the following findings and issue the following award:

II. CONTRACT PROVISIONS INVOLVED:

"Article XI, Section K:

In the event the union concludes that an employee has been unjustly punished or dismissed by the Trial Board, it may, within twenty (20) calendar days after receipt of the judgment of the Board, appeal such judgment to arbitration as provided below. The Board of Arbitrators shall review the justness of the punishment imposed upon the record made before the Trial Board. No new testimony or evidence shall be received by the Board of Arbitrators. If the Board of Arbitrators decides that new evidence or testimony should be heard, it shall refer the case back to the Trial Board. If the Board of Arbitrators decides that the punishment imposed was unduly harsh or severe under all the circumstances, it may modify the findings and punishment accordingly, and its decision shall be final and binding upon the parties and the affected employee."

III. THE ISSUES:

(a) Did the Trial Board provide the grievants rudimentary due process, i.e., a fair hearing?

(b) Were the findings of the Trial Board supported by substantial evidence?

(c) Was the punishment (dismissal) unduly harsh or severe under the circumstances?

IV. FINDINGS AND CONCLUSIONS:

As to all charges and specifications except those involving the December 1, 1972 allegations of bribery, failure to report bribery, and related violations of the

same date, the Board unanimously concludes that the findings of the Trial Board were fundamentally unfair. Due process requires that findings of guilt correspond to the charges on which a person is tried. The findings of guilt relative to the several changes growing out of September, 1972 drug raids do not so correspond. These grievants were charged with one set of offenses and the Trial Board found them guilty of related but distinctly different offenses. It would appear that the specifications were, to this extent, carelessly drafted. Given the many months the Department had to refine the charges before the Trial Board convened, this failure in drafting the charges is hard to comprehend.

This leaves for consideration Charge One, Specification One, against Officer Meadows and Charges One and Two, Specifications One and Two against Pollard, for our consideration.

Meadows:

> "*Charge One*: Neglecting to report any member of the Department known to be guilty of violation of any rule, regulation or order issued for the guidance of the Department.
>
> "*Specification One:* That he, Police Officer Henry C. Meadows, of the Tenth Precinct did while on duty on December 1st, 1972, neglect to report a member of the Department, to-wit, Police Officer Craig J. Pollard of the Tenth Precinct, who is known to Officer Meadows to be guilty of a violation of the Department to-wit: That Police Officer Craig J. Pollard accepted a bribe of money, One Thousand Dollars, to effect the release of a police prisoner, to-wit: Charles Williams; this being a violation of General Order 72-17, Section K, Subsection 50.

Pollard:

"*Charge One:* Participating or becoming involved in any arrangement between criminals and persons who have suffered by their acts with a view to permitting the defendant to escape from penalties provided by law.

"*Specification One:* That he, Police Officer Craig J. Pollard of the Tenth Precinct, did on December 1st, 1972 enter into an agreement with a police prisoner, to-wit: Charles L. Williams, a suspected dealer in the trafficking of illegal narcotics to accept the bribe of One Thousand Dollars in cash in return for the release of Charles Williams from police arrest; this being in violation of General Order 72-17, Section K, Subsection 45.

"*Charge Two*: Accepting bribes of money, valuable services or any other form of compensation or consideration.

Specification Two: That he, Police Officer Craig J. Pollard of the Tenth Precinct did while on duty on December 1st, 1972, release from police custody a prisoner, to-wit: Charles L. Williams after Police Officer Craig J. Pollard having received a bribe of One Thousand Dollars from Charles L. Williams; this being in violation of General Order 72-17, Section K, Subsection 14.

In substance Meadows was charged with failure to report that Pollard accepted a $1,000.00 bribe on December 1, 1972 to effect the release of a police prisoner, to-wit: Charles Williams. Pollard was charged with entering into an agreement with Charles Williams on December 1, 1972 to accept a bribe of $1,000.00 in

return for the release of Williams, a suspected narcotics dealer, from police arrest. He was further charged with effectuating the release.

In its June 5, 1975 decision the Trial Board sustained these charges relating to the bribery of Pollard and failure of Meadows to report the bribe. In explanation of its ultimate findings the Trial Board set forth an analysis of the evidence upon which it relied. Included in that analysis is the statement that the Trial Board believed the testimony of Charles Williams that he delivered to Officer Pollard the sum of $1,000.00 for the purpose of escaping arrest. The Trial Board stated it did not find the crucial testimony of Pollard to be persuasive. (Meadows did not take the witness stand.)

In the Reggish case Arbitrator Mittenthal interpreted Article XI, Section K, quoted above, as requiring the Board of Arbitrators to "defer" to the Trial Board on credibility metters. Although deference is not equivalent to obeisance, it does mean that we should disturb express credibility findings only where the resolution of credibility by the triers of fact (the Trial Board) borders on the absurd. While the Board of Arbitrators is unanimous in concluding that we would not have credited the testimony of Charles Williams and would not have weighed the evidence as did the Trial Board, the credibility resolution and related Trial Board findings are not in the realm of the preposterous. We are constrained to conclude that the ultimate findings relative to the bribery of Pollard in the presence of Meadows are supported by substantial evidence on the record as a whole.

There remains the question as to whether the proceedings were fairly conducted. The Association

contends it was denied the production of necessary winesses at the Trial Board. We express our displeasure with the flip attitude exhibited by Department Counsel at the Trial Board hearing, concerning the rights of police officers to due process of law. Nevertheless, we do not see where the failure of the Department to cooperate more than it did in producing witness under its control caused prejudice to the grievants. The key witness who was not produced was a police sergeant who was no longer within the Department's control.

The timliness of filing of the charges is also in dispute. *Sponick* v *Detroit Police Department*, 49 Mich. App. 162 (1973) holds that rudimentary due process requires, *inter alia*, timely written notice detailing the reasons for proposed administrative action. Here, the incident occurred December 1, 1972, the officers were indicted by a grand dury on May 24, 1973, suspended the same day because of the indictments, found not guilty by a jury in September, 1974, formally charged in disciplinary proceedings in October, 1974, brought before a Chief's Hearing the same month, and had a Trial Board hearing on eight days in May, 1975.

Under all the cicumstances, the indictments issued in 1973, the same day as the suspensions, adequately put the grievants on notice as to the Department's suspicions concerning specified criminal conduct on their part. It was the long-standing custom, mutually agreed to by the City and Association, that Trial Board proceedings awaited the results of parallel criminal proceedings. At no time did grievants demand a Trial Board in advance of their felony trials. Accordingly, the failure to hold a Chief's Hearing or a Trial Board until after the criminal verdict was not a violation of rudimentary due process of law.

Neither was the failure to file formal disciplinary charges and specifications at an earlier date a violation of basic fairness. Once the criminal charges were out of the way it became timely to proceed with any disciplinary proceedings deemed appropriate. The charges were then itemized, and contained nothing new to grievants. They had ample time to study the specific charges prior to their Trial Board, which was a *de novo* trial of the facts.

Having concluded (not without some hesitation) that the December 1, 1972 charges were properly sustained by the Trial Board, we must grapple with the question whether the Trial Board would have meted out the severe penalty of dismissal to either or both men, had it been limited to the December 1 incident. As it stands we have no way of knowing. Since we must decide if the penalty was unduly harsh or severe, we must know the will of the Trial Board. Accordingly we hereby remand the case to the Trial Board for the limited purpose of their review of the record and their reconsideration of the appropriateness of the penalty for the December 1, 1972 actions of Pollard and the inaction of Meadows in the face of his knowledge of the bribe. We deem this Board to possess inherent authority to proceed in this manner since it is necessary, in our opinion, to achieve the ends of justice.

INTERIM AWARD

The findings and penalty of the Trial Board are modified as follows:

1. All charges and specifications relative to the September incidents are not sustained. The decision of the Trial Board sustaining them is set aside for procedural defects of a fundamental nature as set forth above.

2. Action of the Trial Board in sustaining the December 1, 1972 charges and specifications is affirmed by the majority vote of this Board of Arbitrators.

3. The cases of Pollard and Meadows are remanded to the Trial Board for reconsideration of the penalty in each case in light of our narrowing of the findings of guilt.

4. Upon the issuance of a supplemental decision and order of discipline by the Trial Board, the Association may again bring this matter before this Board of Arbitrators for review of the penalty as to its fairness.

Board of Arbitrators
/s/ James R. McCormick
James R. McCormick, Chairman
/s/ James Bannon
James Bannon, Member
/s/ David R. Watroba
David Watroba, Member
(I dissent on Award #2.)

82-269

No.—

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IN THE

Supreme Court of the United States

October Term, 1982

CRAIG POLLARD and HENRY MEADOWS,
Petitioners,
v.
THE CITY OF DETROIT, THE DETROIT POLICE DEPARTMENT, WILLIAM L. HART a/k/a CHIEF OF POLICE; GEORGE BENNETT a/k/a DEPUTY CHIEF OF POLICE and PHILLIP TANNIAN a/k/a FORMER CHIEF OF POLICE,
Respondents

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS FOR REVIEW

I. DID THE COURT OF APPEALS ERR IN AFFIRMING THE FEDERAL DISTRICT COURT DECISION OF GRANTING SUMMARY JUDGMENT?

A. Did Petitioners Have A Right To A Predetermination Hearing?

B. Did Respondents Violate Petitioners' Rights Under 24 USC 1983?

C. Were Petitioners Proper Parties Under 42 USC 1985(3)?

II. DID THE COURT OF APPEALS ERR IN AFFIRMING THE DISTRICT COURT'S DECISION TO DENY PETITIONERS' MOTION TO AMEND?

A. As a Rule 59(e) Motion, Petitioners' Motion Is Untimely And Should Be Denied.

B. Petitioners' Motion Failed To Set Forth Any Reason For Granting The Relief Requested By A Rule 59(e) Motion.

C. Petitioners' Rule 60(b) Motion Was Unjustified.

D. Petitioners Did Not State Adequate Grounds For Permission To Amend Under Rule 15(a), F.R.C.P.

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No.——

IN THE

Supreme Court of the United States

October Term, 1982

CRAIG POLLARD and HENRY MEADOWS,
Petitioners,
v.
THE CITY OF DETROIT, THE DETROIT POLICE DEPARTMENT, WILLIAM L. HART a/k/a CHIEF OF POLICE; GEORGE BENNETT a/k/a DEPUTY CHIEF OF POLICE and PHILLIP TANNIAN a/k/a FORMER CHIEF OF POLICE,
Respondents

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

COUNTER-STATEMENT OF CASE

Petitioners filed this petition after the U.S. Court of Appeals for the Sixth Circuit affirmed a decision by the Honorable Charles W. Joiner of the Federal District Court, Eastern District of Michigan, Southern Division. The decision was reflected in his Opinion and Order dated January 16, 1980 dismissing Petitioners Complaint and his dated March 16, 1980 denying Petitioners' motion to amend their complaint and further dismissing

all federal claims alleged in their Complaint with prejudice in addition to all remaining state claims. A judgment reflecting the Order of March 16, 1980 was entered by the Court on March 26, 1980.

Judge Joiner dismissed Petitioners' second amended complaint for the reason that "A thorough reading of the (second amended) complaint has convinced the Court that while there are a number of substantial disagreements between the parties, *none of them* involves due process of law. The termination procedure that was used by Defendant involves numerous levels of due process, and despite what may be some :nissteps in that procedure, this court could not find that the Plaintiffs' due process rights have been violated *under the facts as pleaded*." (Emphasis added)

Subsequent to the January 16, 1980 Order, on January 28, 1980, Petitioners filed a motion for order allowing them to amend their second amended complaint and at the same time filed the proposed amended complaint.

The Court after consideration of Petitioners' request to amend their complaint denied their motion for the reason that the proposed third amended complaint was also lacking as it failed to state a claim upon which relief could be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure. As a result of Judge Joiner's decision, all relief was denied under federal law with the remaining elements of Petitioners' case dismissed for lack of jurisdiction.

COUNTER-STATEMENT OF RELEVANT FACTS

On or about May 24, 1974, the Petitioners were suspended from the Detroit Police Department because each was indicted by a Grand Jury. Both individuals were subsequently brought to trial and acquitted of criminal wrongdoing.

Subsequent to the criminal trial, the Police Department administratively charged Henry Meadows with:

> "Charge One: Neglecting to report any member of the Department known to be guilty of violation of any rule, regulation or order issued for the guidance of the Department.
>
> Specification One: That he, Police Officer Henry C. Meadows, of the Tenth Precinct did while on duty on December 1st, 1972, neglect to report a member of the Department, to wit, Police Officer Craig J. Pollard of the Tenth Precinct, who is known to Officer Meadows to be guilty of a violation of the Department to wit: that Police Officer Craig J. Pollard accepted a bribe of money, One Thousand Dollars, to effect the release of a police prisoner, to wit: Charles Williams; this being in violation of General Order 72-17, Section K, Subsection 50.
>
> Charge Two: Willfully making a false, oral or written statement or report.
>
> Specification Two: That he, Police Officer Henry C. Meadows, of the Tenth Precinct did while on duty on September 5th, 1972, willfully make a false written statement on a search warrant affidavit, thereby advising the Court, to wit: Recorder's Court, City of Detroit, Michigan,did

receive on eight previous occasions information from a reliable informant in an effort to obtain a search warrant for Apartment 103 of 3750 Chicago, Detroit, Michigan, this being in violation of General Order 72-17, Section K, Subsection 7.

Charge Three: Neglecting to turn over all property found, seized or taken from persons arrested to the proper officer without unnecessary delay.

Specification Three: That he, Police Officer Henry C. Meadows of the Tenth Precinct did while on duty on September 5th, 1972, take from a person arrested, to-wit: Judson L. Mathis, approximately Seven Hundred Dollars, did thereafter neglect to turn the approximately Seven Hundred Dollars over to the proper officer without unnecessary delay; this being in violation of General Order 72-17, Section K, Subsection, 36.

Specification Four: That he, Police Officer Henry Meadows of the Tenth Precinct did while on duty on September 6, 1972, seize property, narcotics, heroin, at the scene of a police narcotics raid at Apartment 102 at 2648 Rochester, Detroit, Michigan; did thereafter neglect to turn the seized property over to appropriate police authorities without unnecessary delay; this being in violation of General Order 72-17, Section K, Subsection 36.

Specification Five: That he, Police Officer Henry C. Meadows of the Tenth Precinct did on September 22nd, 1972, neglect to turn over to the proper departmental officer without unnecessary delay all property found, seized or taken from

persons arrested, to-wit: That he, Police Officer Henry C. Meadows, delivered fourteen packets of narcotics, heroin, to a citizen, to-wit: Ronald Johnson, this being in violation of General Order 72-17, Section K, Subsection 36.

Specification Six: That he, Police Officer Henry C. Meadows of the Tenth Precinct did on September 6, 1972, neglect to turn over all property found, seized or taken from persons arrested to the proper departmental officer without unnecessary delay; in that Police Officer Henry C. Meadows deposited a quantity of narcotics in the garbage can at the rear of 3900 Joy Road, Detroit, Michigan; this being in violation of General Order 72-17, Section K, Subsection 36."

The Police Department charged Mr. Craig Pollard with:

"Charge One: Participating or becoming involved in any arrangement between criminals and persons who have suffered by their acts with a view to permitting the defendant to escape from penalties provided by law.

Specification One: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did on December 1st, 1972, enter into an agreement with a police prisoner, to-wit: Charles L. Williams, a suspected dealer in the trafficking of illegal narcotics, to accept the bribe of One Thousand Dollars in cash in return for the release of Charles Williams from police arrest; this being in violation of General Order 72-17, Section K, Subsection 45.

Charge Two: Accepting bribes of money, valuable services or any other form of compensation or consideration.

Specification Two: That he, Police Officer Craig J. Pollard of the Tenth Precinct did while on duty on December 1st, 1972, release from police custody a prisoner, to-wit: Charles L. Williams, after Police Officer Craig J. Pollard had received a bribe of One Thousand Dollars from Charles L. Williams; this being in violation of General Order 72-17, Section K, Subsection 14.

Charge Three: Willfully make a false, oral or written statement or report.

Specification Three: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did while on duty on Spetember 5th, 1972, willfully make a false written statement on a search warrant affidavit, thereby advising the Court, to-wit: Recorder's Court, City of Detroit, that he had received information from a reliable informant on numerous occasions in an effort to obtain a search warrant for Apartment 102 of 2648 Rochester, Detroit, Michigan; this being in violation of General Order 72-17, Section K, Subsection 70.

Charge Four: Neglecting to report any member of the Department known to be guilty of violation of any rule, regulation or order issued for the guidance of the Department.

Specification Four: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did while on duty on September 6, 1972, neglect to report a member of the Department, to-wit: Police Officer Henry

C. Meadows of the Tenth Precinct, who was known to Officer Craig J. Pollard to be guilty of a violation of an order of the Department; to-wit: That he, Police Officer Henry C. Meadows, had neglected to turn over all property found, seized or taken from persons arrested through appropriate police authority without delay; this being in violation of General Order 72-17, Section K, Subsection 50.

Charge Five: Neglecting to turn over all property found, seized or taken from persons arrested to the proper officer without unnecessary delay.

Specification Five: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did on September 6th, 1972, being then accompanied by Police Officer Henry C. Meadows of the Tenth Precinct, seized property, narcotics, heroin, at the scene of a police narcotics raid at Apartment 102 at 2648 Rochester, Detroit, Michigan, and did thereafter neglect to turn the seized property over to appropriate police authorities without unnecessary delay; this being in violation of General Order 72-17, Section K, Subsection 36.

Specification Six: That he, Police Officer Craig J. Pollard of the Tenth Precinct, did while on duty of September 5th, 1972 take from a person arrested, to-wit: Judson L. Mathis, approximately Seven Hundred Dollars, did thereafter neglect to turn the approximately Seven Hundred Dollars over to the proper departmental officer in a timely manner, this being in violation of General Order 72-17, Section K, Subsection 36."

On or about October 28, 1974, Mr. Philip Tannian, then Chief of Police, had these charges read to Petitioners in the presence of their attorney at a Chief's Hearing. Petitioners were then discharged from the Police Department; they suffered no additional loss of benefits or pay. At the conclusion of the hearing,[1] the Petitioners exercised their discretion to have a de novo hearing by demanding a trial board. A Trial Board was held before three executive police officers of the Detroit Police Department in accordance with the Charter of the City of Detroit, the Rules and Regulations and the collective bargaining agreement between the City of Detroit and the Detroit Police Officers Association.

The Trial Board found Mr. Meadows and Mr. Pollard guilty of all charges, from that decision the Petitioners herein, appealed to a panel of arbitrators. The Panel consisted of two partial arbitrators, one each appointed by the Department and the Plaintiffs, through their Union representative. A third and independent arbitrator was mutually agreed upon and jointly selected by the parties thereto.

An Arbitration Hearing was held in which both parties gave oral argument. Briefs were submitted. The Trial Board record was placed before the Arbitration Panel. It issued an opinion and award. In essence, the Arbitration Panel reversed the Trial Board on all but two charges, being Mr. Pollard's acceptance of a bribe on December 1, 1972 and Mr. Meadows' inaction in the face of his knowledge of the bribe. The Arbitration Panel then remanded the case back

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[1] A Chief's Hearing is not an adversary hearing in which both sides present a formal adversary hearing. It is the basis in which charges are formally brought to a person's attention. Said individual may or may not accept the Chief's decision as final.

to the Trial Board to determine if the penalty should be altered in the face of the Arbitration Panel's action. The Arbitration Panel also retained jurisdiction of the matter in order to review the Trial Board's decision, should the Grievants, Mr. Meadows and Mr. Pollard, demand a second review.

The Trial Board reaffirmed the penalty of discharge. Neither the City of Detroit nor the Arbitration Panel received a demand for review of the Trial Board's reaffirmance.[2]

On October 24, 1978, Petitioners filed suit in the U.S. District Court, Eastern District of Michigan, for breach of employment contract, for breach of union contract, wrongful discharge, libel and slander, and for deprivation of constitutional and civil rights. The case was assigned to Judge Charles Joiner. Respondents answered and pled various affirmative defenses.

Petitioners subsequently filed an Amended Complaint, which Respondents answered, with affirmative defenses.

Respondents then filed a Motion For Judgment On The Pleadings And/Or Partial Judgment On The Pleadings And/Or Summary Judgment And/Or Partial Summary Judgment, on November 14, 1979; on December 4, 1979 Oral Argument was made before Judge Joiner. On January 16, 1980, having already dismissed (October 8, 1980) those claims, based upon 42 USC 1985(3) as a result of Oral Motion, Judge Joiner dismissed all other claims against Respondents. Judge Joiner gave Petitioners until January 25, 1980 to file an amended complaint.

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[2] Petitioners raised for the first time that they requested their Union to go back to arbitration. That assertion was never brought to anyone's attention prior to seeking this writ of certiorari.

On January 29, 1980, Petitioners filed what they denominated as their Third Amended Complaint. Respondents filed Objections and Briefs In Support thereof.

Judge Joiner denied the Motion To Amend. From this decision, Petitioners appealed to the U.S. Court of Appeals for the Sixth Circuit. There, the Court of Appeals affirmed the District Court's decision. After a request for rehearing was denied, Petitioners requested that a Writ of Certiorari issue.

ARGUMENT

I.

THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE FEDERAL DISTRICT COURT'S DECISION TO GRANT SUMMARY JUDGMENT

A.

Petitioners Had No Right To A Predetermination Hearing

It is submitted that Petitioners failed to identify the basis for their assertion that they had a right to prehearing determination, as public employees, before suspension without pay or termination of employment. This failure was inevitable, given the state of Michigan law and the collective bargaining agreement in effect at the time of their termination.

In Michigan, there is no dispute that a non-union, untenured employee serves at the pleasure of the public employer; said individuals are entitled to no hearing of any type. *Scott* v. *City of Ann Arbor*, 76 Mich App 535; 257 NW 2d 157. It is also clear that Michigan law

determines if there is a right that could have been violated. *Bishop* v. *Wood*, 426 US 341, 48 L Ed 2d, 684, 96 S Ct 2074 (1976). The questions raised here are based in part on the alleged right to a hearing prior to termination. There exists no such right independent of statute or contract in Michigan. In *Rockwell* v. *Crestwood School District*, 393 Mich 616, 227 NW 2d 736, (1975), the Michigan Supreme Court was faced with the question of whether school teachers, who were on strike, could be discharged without a prior hearing, without violating due process. The Michigan Supreme Court answered:

> "We conclude that a teacher, including a teacher on continuing tenure, who strikes in violation of the PERA[3] may be disciplined without a prior hearing and we reverse the circuit court and the Court of Appeals."

The Michigan Supreme Court went on to state at 633-634 that:

> "When the government seeks to deprive a person of a property right — and we accept, arguendo, that a teacher's statutory rights under the teacher's tenure act constitute property — due process requires a 'hearing appropriate to the nature of the case.' *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 US 306, 313; 70 S Ct 652; 94 L Ed 865 (1950). 'The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.' *Boddie* v. *Connecticut*, 401 US 371, 378; 91 S Ct 780; 28 L Ed 2d 113 (1970). 'The types of 'liberty' and

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[3] The Court used the phrase "PERA" for the Michigan Public Employment Relations Act, being MCLA 423.201 et seq.

'property' protected by the Due Process Clause vary widely, and what may be required under that clause in dealing with one set of interests which it protects may not be required in dealing with another set of interests.' *Arnett* v. *Kennedy*, 416 US 134, 155; 94 S Ct 1633; 40 L Ed 2d 15, 34 (1974). 'The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.' *Cafeteria Workers* v. *McElroy*, 367 US 886, 895; 81 S Ct 1743; 6 L Ed 2d 1230 (1961)."

As noted by the Michigan Supreme Court, it is within the framework of PERA[4] that the wages, hours and working conditions of employment are established and maintained for public employees. Under PERA's mandate, a collective bargaining agreement was reached between the City of Detroit and the DPOA. Said agreement recognized the City's inherent right to discipline, without the requirement that it first provide for a hearing before the imposition of discipline.

Even before this collective bargaining agreement went into effect, the City of Detroit long exercised its right, establishing its own personnel system, as a Home Rule City,[5] which allows for termination of tenured employees without a hearing prior to the termination.

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[4] PERA is the dominent statute in Michigan in terms of public employment. Collective bargaining agreements reached under PERA supercede charter and ordinance provisions that are in conflict. See *DPOA* v. *City of Detroit*, 391 Mich 44; 214 NW 2d 803 (1974); *Rockwell, supra; DPOA* v. *City of Detroit*, 61 Mich App 47, 233 NW 2d 49 (1975).

[5] Article 7, § 22 Michigan Constitution; MCLA 117.1 et seq.

This Honorable Court should not disturb the City of Detroit's personnel policy as it violates no federal statute or constitutional provision. This policy in no way violates any state or local rights secured by the Fourteenth Amendment of the U.S. Constitution. It is a local decision that is particularly appropriate with police officers who are charged with the highest standards of behavior. It is submitted that the interests of the City outweigh the interests of the individual in the instant situation. The right of the people to not have on its payroll individuals believed to be perpetrators of wrongdoing is paramount. The City's policy should not be disturbed merely because a court may not like it; indeed, *Bishop, supra*, teaches at 349-350 that:

> "The federal court is not the appropriate forum in which to review the multitude of personnel decisions made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable in the day-to-day administration of our affairs. The United States Constitution cannot feasibly be construed to require federal judicial review for every such error."

In any case, the City's policy as to termination prior to hearing was and is subject to negotiation. The DPOA and the City of Detroit negotiated whether the City of Detroit should have the right to proceed as it did in the instant case. As stated by the Arbitrator, infra, the City of Detroit did act in accordance with the terms of the collective bargaining agreement.

In short, Petitioners had no right to a hearing prior to discipline under Michigan law or by contract.

B.

Respondents Did Not Violate Petitioners' Rights Under 42 USC 1983

Petitioners' basic claim is that certain property rights, secured by the Fourteenth Amendment of the United States Constitution, through 42 USC 1983, were violated by Respondents.[6] Respondents submit that this is a manifestly untrue statement as the record of the instant matter so demonstrates.

It must first be noted that virtually every charge as to contract violation and charter[7] made before the District Court, the Court of Appeals, and now here, was raised and dealt with before an arbitration panel which reversed in part, affirmed in part, and remanded back to the Trial Board that part of which was affirmed for a decision as to the penalty in light of the initial review by the Arbitration Panel. It must also be noted that subsequent to the penalty of discharge being reinstated a second time, Petitioners did *not* seek further review by the Arbitration Panel, as was their right. On this basis alone, Respondents believe that this Court should follow both Michigan and Federal case law and affirm the District Court's decision. *Republic Steel Corp.*, v. *Maddox*, 379 US 650; 13 L Ed 2d 580; 85 S Ct 614; *Hines* v. *Anchor Motor Freight, Inc.*, 424 US 554, 96 S Ct 1048, 47 L Ed 231 (1976); *Field* v. *Local 652 UAW AFL-CIO*, 6 Mich App 140 (1967).

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[6] The "liberty" interests allegations do not appear until the "Third Amended Complaint."

[7] The Charter of the City of Detroit, in terms of employee-employer relationships, is part of the collective bargaining agreement between the City of Detroit and Petitioners' Union.

The foundation of Petitioners' claim is that their due process rights were violated because they had a right to the expectation of continued employment, without first having a hearing prior to termination, which would determine their fitness to remain on the job. Petitioners also assert that they should not have been suspended, nor should they have had to wait two years after initial suspension to have a Trial Board. These rights, they say, violated the collective bargaining agreement between their union, the Detroit Police Officers Association, hereafter the DPOA, and the Charter of the City of Detroit.[8]

Respondents have searched Petitioners Brief to this Honorable Court in vain in search of those sections of the collective bargaining agreement and of the Charter that Petitioners rely upon in support of these claims. Respondents submit that they do not exist. Indeed, Respondents submit that Petitioners attempt to make mockery of an elaborate process agreed to by their union and the City of Detroit that not only guarded their rights, but that protected the integrity of the City of Detroit; it is ironic because they were willing participants in that process that delayed the Trial Board. Respondents respectfully refer this Honorable Court to Arbitrator McCormick's Opinion and Award (Petitioners' Appendix pp. 77-78) where he stated in pertinent part that:

> "The timeliness of filing of the charges is also in dispute. *Sponick* v. *Detroit Police Department*, 49 Mich App 162 (1973) holds that rudimentary due process requires, *inter alia*, timely written

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[8] Petitioners lost their pay and benefits more than a year before the 1974 Charter went into effect.

notice detailing the reasons for proposed administrative action. Here, the incident occurred December 1, 1972, the officers were indicted by a grand jury on May 24, 1973, suspended the same day because of the indictments, found not guilty by a jury in September, 1974, formally charged in disciplinary proceedings in October, 1974, brought before a Chief's Hearing the same month, and had a Trial Board hearing on eight days in May, 1975.

Under all the circumstances, the indictments issued in 1973, the same day as the suspensions, adequately put the grievants on notice as to the Department's suspicions concerning specified criminal conduct on their part. *It was the long-standing custom, mutually agreed to by City and Association, that Trial Board proceedings awaited the results of parallel criminal proceedings. At no time did grievants demand a Trial Board in advance of their felony trials. Accordingly, the failure to hold a Chief's Hearing or a Trial Board until after the criminal verdict was not a violation of rudimentary due process of law.*

Neither was the failure to file formal disciplinary charges and specifications at an earlier date a violation of basic fairness. Once the criminal charges were out of the way it became timely to proceed with any disciplinary proceedings deemed appropriate. *The charges were then itemized, and contained nothing new to grievants. They had ample time to study the specific charges prior to their Trial Board which was a de novo trial of the facts."* (Emphasis added)

As stated by the Arbitrator, this procedure, which included pre-hearing suspensions and termination, had been mutually agreed to and in fact was a "long standing custom."[9] Petitioners seek here to create employment and contractual rights where none have existed prior to the date of this lawsuit being started.

The agreement not to start Trial Board proceedings immediately exists primarily to protect those who are criminally charged. Petitioners did not want to be defending themselves in two different forums at the same time. Petitioners, as those similarly situated, did not want to be tried or convicted by a Trial Board prior to being tried for virtually the same things in a criminal court for tactical reasons. Thus, Petitioners were active participants in the decision to delay the Trial Board until after the completion of the criminal trial.

Once the criminal trial was completed, Petitioners were quickly charged in detail and brought before the Trial Board. Nothing new was alleged at the Trial Board. Petitioners did not and could not allege that they were surprised, as Arbitrator McCormick so found.

After reading nearly 1,000 pages of Trial Board transcript, reviewing the exhibits, reading the briefs of legal counsel for both sides, the Arbitration Panel unanimously reversed all but two substantive charges against the Petitioners; by majority vote the Panel upheld two substantive charges and remanded the matter back to the Trial Board to reconsider the discharge

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[9] Petitioners were represented at the Arbitration Hearing, at the Trial Board, and at the Criminal Trial by the same law firm. This law firm was paid for and supplied by their union, the DPOA.

This is particularly significant in that both their union and the law firm were well aware of the provisions of the collective bargaining agreement and of the bargaining history between the City of Detroit and the Union.

penalty in light of its actions; the Arbitration Panel retained jurisdiction to review the new decision on the penalty, should review be requested. Although the discharge penalty was reaffirmed, Petitioners did not request a new hearing before the Arbitration Panel.

Petitioners did not exhaust their administrative remedy as is required prior to resorting to the courts. See *Field* v. *Local 652 UAW AFL-CIO*, 6 Mich App 140. Petitioners do not now, nor did they at a prior time, assert that the exhausting of said administrative remedies would have been futile. Nor did they assert that their union refused to take the matter back to arbitration, until *this* petition was filed.

It is also important to note that Petitioners raised for the first time a new alleged contract violation. They complained that William L. Hart, now Chief of Police, sat on the Trial Board. They assert that this is inherently unfair. Petitioners neglect to point out that Mr. Hart was not the Chief of Police at the time the Trial Board heard and decided the case. Second, Petitioners failed to point out that upon remand to the Trial Board, only the Arbitration Panel had any authority to review the second leveling of a penalty.

Indeed, were there never an appeal to arbitration, the Chief of Police[10] has *no* authority to review a Trial Board Decision except at the request of the officer charged with the offense; except for arbitration, a Trial Board's Decision is final and not subject to further administrative review.

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[10] Prior to July 1, 1974, the effective date of the present Charter of the City of Detroit, the Chief of Police was denominated the "Police Commissioner". Even then, the Chief could only lower the penalty.

Petitioners did not attempt to exercise their right to go back to the Arbitration Panel. In essence, they seek now to hold Respondents to blame for their failure. In so doing, Petitioners seek to give to the Courts the duties assigned to the Arbitration Panel — that is deciding the merits of the grievance under the contract. Under Michigan law, the Courts venture not into the bailwick of the arbitrator. See *Kavela-Norman-Dickson School District* v. *Kaleva-Norman-Dickson School Teachers Association*, 393 Mich 583, 227 NW 2d 500 (1975). Michigan follows the Federal courts on this point. See *United Steelworkers of America* v. *Warrior-Gulf Navigation Co.*, 363 US 574; 4 L Ed 2d 1409; 80 S Ct 1347 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 US 593; 80 S Ct 1358; 4 L Ed 2d 1424 (1960); *United Steelworkers of America* v. *American Manufacturing Co.*, 363 US 564; 80 S Ct 1343; 4 L Ed 2d 1403 (1960).

Respondents think that the Michigan Supreme Court stated it best where in *Kavela supra* at 595 it stated:

> "Where a court finds itself weighing the pros and cons of each party's interpretation of substantive provisions of the contract it is likely that the court has gone astray."

It is submitted that Petitioners seek to have this Court, as it sought below, go astray by deciding again the merits of the Arbitration case.

C.

Petitioners Were Not Proper Parties Under 42 USC 1985(3)

It is well settled that for a person to file suit of this statue, it is necessary that the tortfeasor be discriminating against people on the basis of race or another

invalid classification. See *Griffin* v. *Breckenridge*, 403 US 88, 91 S Ct 1790, 24 L Ed 2d 338; *Briley* v. *California*, 564 F2d 849 (1977); *Rowe* v. *Tennessee*, 431 F Supp 1257 (1977). Petitioners failed to allege that they were part of a class that would come within the ambit of 42 USC 1985(3).

To be sure, in their Second Amended Complaint, they implicitly alleged that there existed a class of police officers "who because they refuse to take part in official wrongdoing are stigmatized and subjected to severe and discriminatory departmental scrutiny and discipline . . ." . Still, it stretches the imagination too far to assert that anytime a person refuses to take part in illegal activities, that he or she belongs to a class protected by 42 USC § 1985(3).

Respondents *do not here, as they did not below*, assert that 42 USC 1985(3) must always be one of racial classification. Respondents do assert that there existed no allegation by Petitioners that would, if true, support a claim of violation of 42 USC 1985(3). Petitioners do not identify which law, privilege or immunity they lost the equal protection thereof.

In any case, as aforestated, 42 USC 1985(3) provides no general tort remedy. *Kinney Shoe Corp.* v. *Vorhes*, 564 F 2d 859 (1977). The situation here is much like that found by the Court of Appeals in *Arnold* v. *Tiffany*, 487 F 2d 216 (1973). The actions allegedly taken by Respondents were done because Petitioners alleged failure to participate in official wrongdoing, not because Petitioners were members of a class traditionally subjected to invidious discrimination. This is not the stuff of which *Griffin, supra*, spoke.

IV.

THE DISTRICT COURT PROPERLY DENIED PETITIONER'S MOTION TO AMEND

Respondents' Motion To Amend to allow the submission of the purported Third Amended Complaint was properly denied by the District Court for several reasons.

A.

As A Rule 59(e) Motion, Petitioners Motion Was Untimely And Should Have Been Denied.

Respondents respectfully assert that Petitioners' Motion for permission to amend their Complaint, was at that stage of the proceedings, actually a motion under Rule 59(e), F.R.C.P. to vacate judgment and is a device to seek leave to amend the complaint. As stated in *Parks* v. *Mr. Ford*, 68 FRD 305 (1975):

> "There can be no doubt that a motion under Rule 59(e) is the proper procedural vehicle to use when a party seeks to vacate, alter, or amend a summary judgment, even though there has not been a trial of the matter, *Sonnenblick* v. *Goldman Corp.*, supra, 420 F. 2d at 858-859, *Tucker* v. *Reading Co.*, 335 F. Supp. 1269, 1270 (E.D. Pa. 1971). Moreover, a motion under Rule 59(e) may be used to vacate the judgment, and thereafter as a device to seek leave to amend the complaint, see *Foman* v. *Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962), *Ginsburg* v. *Stern*, 242 F.2d 379, 380 (3d Cir. 1957) (Rule 60(b)), *Kelly* v. *Delaware River Joint Commission*, 187 F. 2d 93, 94-95 (3d Cir. 1951)"

Rule 59(e) provides as follows:

> "Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

As further stated in *Parks* v. *Mr. Ford, supra* at 307, the ten day rule is mandatory and is measured by the time of service of the motion:

> "The law is clear that *the ten day requirement of Rule 59(e) is mandatory and may not be extended by the trial court.* Rule 6(b), (F.R. Civ. P.), see *Steward* v. *Atlantic Refining Company*, 235 F.2d 570, 571-572 (3d Cir. 1956), notwithstanding an agreement of the parties to enlarge this period, *Nugent* v. *Yellow Cab Company*, 295 F.2d 794, 795-796 (7th Cir. 1961) cert. den. 369 U.S. 828, 82 S.Ct 844, 7 L. Ed. 2d 793. However, *the rule merely requires that the motion be served, rather than filed of record, within ten days,* provided that it is filed within reasonable time after it is served, Rule 5(d), (F.R.Civ.P.), *Keohane* v. *Swarco, Inc.* 320 F.2d 429, 430-432 (6th Cir. 1963). Rule 5 (b) provides that service may be made upon counsel for a party by mail, and further specifies that such service is complete upon mailing, see *Stover* v. *Universal Moulded Products Corporation*, 11 F.R.D. 90, 91 (E.D. Pa. 1950)." (Emphasis added)

Petitioners did not meet the procedural requirements for a Rule 59(e) motion. Service upon opposing parties was not made until January 29, 1980, thirteen days after entry of the order granting summary judgment, or twelve days after the Respondents received notice of the order. Having failed to serve their motion within ten days after entry of judgment, Petitioners waived their right to the

relief requested. The ten day requirement of Rule 59(e) is mandatory. *Parks* v. *Mr. Ford, supra*, at 307.

B.

Petitioners' Motion Failed To Set Forth Any Reason For Granting The Relief Requested By A Rule 59(e) Motion.

Petitioners offered no argument in support of a Rule 59(e) motion to alter or amend judgment. They have apparently concluded that the amendment which they requested earlier, and which was granted failed to state a claim against Respondents.

Where a proposed amendment states an alternative theory of recovery, there may be justification for a court exercising its discretion to grant a motion to vacate the judgment in order to allow amendment of the complaint. See, *Foman* v. *Davis*, 371 US 178, 9 L Ed 222, 83 S Ct 227 (1962), in which the United States Supreme Court found error in the District Court's denial of such a motion where the proposed amendment would state an alternative theory for recovery. No such justification existed in the instant case. Respondents' motion and proposed amendment did not raise any new theory. The motion merely asserted that the theory which Respondents requested permission to allege does not apply to the instant Respondents, so they should be allowed to recant their complaint once again in an attempt to state a claim under theories already dismissed. The foregoing was not a ground upon which to grant the relief requested.

Even if an alternative theory of relief, or new facts, had been raised in the proposed amended complaint, there was no requirement that the District Court grant a Rule 59(e) or Rule 60(b) motion to vacate in order to amend after an order of summary judgment has been entered as

to the Counts sought to be added to or clarified. As there is no right to amend once the order of dismissal has been entered, leave to amend was discretionary. *Salwer Paper* v. *Merril Lynch*, 79 FRD 130 (1978).

Reasons frequently offered for denial of motions to vacate judgment and refusal of permission to amend are:

> "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." *Foman* v. *Davis*, 371 US 178, 182, 9 L Ed 2d 222, 83 S Ct 227 (1962).

If the instant proposed amendments are found to contain any alternative theories of recovery or new facts, to justify amendment those new elements must do more than restate the original allegations.

Even if the proposed amendment contained more than restatement in new language, there remained a heavy burden of justification for relief from judgment in order to seek leave to amend. See *Geigel* v. *Sea Land*, 44 FRD 1 (1968). To have subjected Respondents to a series of amendments without end would have been a substantial prejudice to their rights as litigants. See, *Freeman* v. *Continental Gin Company*, 381 FRD 459 (1967), where the court noted that amendment is often denied even before judgment is entered. The instant matter involves a motion to amend after judgment is entered as to the counts sought to be amended. Petitioners were terminated in October, 1974 with the administrative appeal concluded by June, 1975. Respondents had asserted the three year statute of limitations, among other defenses, to Petitioners' claims. To have allowed amendment of pleadings to cure defects which could

have been cured before summary judgment would have further prejudiced Respondents' right to rely upon the protection of the three year statute of limitations. See, *Krum* v. *Sheppard*, 255 F Supp 994.

C.

Petitioners' Rule 60(b) Motion Was Unjustified

If the "new evidence" which Petitioners offered as justificaton for Rule 60(b) relief is of a cumulative nature and would not change the result of the ruling as to Counts I and II, Petitioners themselves admit that the summary judgment of January 16, 1980 should not be disturbed. Petitioners did not allege in their motion how the facts are not cumulative, but merely stated in conclusory terms that the alleged facts state a cause of action. See *Prostrollo* v. *University of South Dakota*, 63 FRD 9 (1974). Rule 60(b) provides for extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances. *Prostrollo*, 63 FRD 9, 11. The "new" evidence *referred to was available to Respondents before the order of summary judgment was entered*. Petitioners could have, if exercising the requisite due diligence, made their motion for leave to amend before judgment. Instead they waited and sought extraordinary relief under Rule 60(b). The requirements clearly are not met and such relief should be denied.[11]

Petitioners attempted to justify reopening the dismissal of Counts I and II of the complaint in order to secure pendent jurisdiction for the newly constituted

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[11] Petitioners asserted that the facts were not available prior to filing their first amended complaint. The first amended complaint was filed in 1978. Petitioners did not seek discovery until August 31, 1979, more than 10 months after starting the lawsuit. Petitioners lack of diligence weighed heavily against the filing of yet another complaint.

allegations of common law breach of contract contained in Count III of the proposed amendment. Where, however, federal claims have been dismissed, or are subject to dismissal, then there is no federal jurisdiction for the state law claims. See, *United Mine Workers* v. *Gibbs*, 383 US 715, 726, 86 S Ct 1130, 16 L Ed 2d 218 (1966). As stated in *Salwer* v. *Merrill Lynch, supra*, at 137:

> "[12] Finally the proposed amended complaint repeats, with little or no alteration, the common law claims of the original complaint based on negligence (third and seventh claims), breach of contract (fourth claim) and common law fraud (sixth claim). It is well settled that if federal claims are subject to dismissal under Rule 12(b), then the allegedly 'pendent' common law claims should also be dismissed. *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 726, 86 S Ct 1130, 16 L Ed 2d 218 (1966); *Kavit* v. *A.L. Stamm & Co.*, 491 F 2d 1176, 1179-80 (2d Cir. 1974)"

D.

Petitioners did not state adequate grounds for permission to amend under Rule 15(a), F.R.C.P.

Petitioners cited the language of Rule 15(a) FRCP and *Foman* v. *Davis, supra*, as the authority upon which their request should be granted. Respondents assert that neither Rule 15(a) nor its interpretation in *Foman* v. *Davis* compel a court to grant permission to amend in the instant circumstances.

1. Petitioners failed to meet the basic test set forth in *Foman* v. *Davis*, that "the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief." 371 US 178, 182. The District Court ruled on the merits of Counts I and II of the second amended complaint in its Order of Summary Judgment.

It thus established that the facts and circumstances relied upon by Petitioners were not a proper subject of relief. Petitioners sought, however, to amend the counts found wanting by adding and/or clarifying. As no new facts or theories were included in the proposed amendment, the request was properly denied.

Foman v. *Davis, supra*, sets forth other criteria for granting or denying permission to amend:

> ". . .undue delay, bad faith or dilatory motive on the part of the movant, *repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party* by virtue of allowance of the amendment, *futility of the amendment*, etc. . . ." 371 US 178, 183 (Emphasis added)

2. Petitioners had repeatedly failed to cure deficiencies in their case by previous amendment. While it is settled that amendments are freely given when the interests of justice would be served, amendments are *not* freely given to permit a restatement of the same facts in different language or the reassertion of a claim previously determined. *Kasey* v. *Molybdenum Corporation of America*, 467 F2d 1284, 1285 (1972). Where, as here, a proposed amendment went to the merits of a claim and put nothing in issue that had not already been resolved, Rule 15(a) does not require the allowing of the amendment.

As the proposed amendments to the complaint added nothing new in terms of fact or theory, the amendment was futile. A futile amendment is one which fails to set forth any new fact or theory which may cure the deficiencies of the complaint. As stated in *Erie* v. *Texas Eastern Transmission Corporation*, 377 F Supp 344 (1974):

> "While it is true that leave to amend a pleading is usually freely given, Federal Rule of Civil Procedure 15(a), if the amended pleading could be defeated by a motion for summary judgment, to grant leave to amend would be a futile gesture. *Foman* v. *Davis*, 371 US 178, 83 S Ct 227, 9 L Ed 222 (1962); 3 Moore Federal Practice (2d 3d. 1948) Paragraph 15.08[4]. Accordingly the court will proceed to a determination of the merits of the question. The legal sufficiency of the proposed amendment will guide the court in determining the efficacy or granting leave."

Respondents submit that the above issue was resolved previously by ruling of the District Court in its Memorandum Opinion and Order granting summary judgment as to Counts I and II of the second amended complaint. As stated by the District Court in its Memorandum Opinion:

> "The termination procedure that was used by the defendants involves numerous levels of due process, and despite what may be some missteps in that procedure, this court could not find that the plaintiffs' due process rights have been violated under the facts as pleaded." Memorandum Opinion, p.2

As there was no difference in substance between the Counts I and II dismissed on summary judgment and the proposed amended Counts I and II, the legal sufficiency of the new allegation was *res judicata*. Amendment would have been futile and improper.

If this Court should find any difference in substance between the dismissed allegations of Counts I and II and the recanted allegation of the proposed third amended Counts I and II, Respondents respectfully submit that the proposed amendments did not cure the fatal flaws in the complaint.

Counts I and II of the dismissed complaint were based on the constitutional guarantee to due process of law. Respondents reassert that due process requirements were met in the processing of Petitioners' suspensions and dismissals from the Detroit Police Department.

Petitioners had a de novo review of the Chief's decision to terminate their employment. The Police Trial Board found them guilty on all charges and affirmed the Chief's decision to dismiss. Petitioners then appealed the Trial Board decision to an outside Arbitration Panel, which affimed the findings of the Trial Board as to the charge of bribery and failing to report the same and remanded to the Trial Board for reconsideration of punishment in light of the modified findings. The Arbitration Panel retained jurisdiction to review the punishment decision. The Trial Board affirmed its earlier decision to dismiss. Respondents did not seek the further review of the Arbitration Panel. Petitioners characterize the proceedings as a denial of their due process rights. Respondents cannot see how the procedures described above failed to comply with the basic right to due process in the employment situation.

3. Prejudice to Respondents. To have allowed amendment of the complain at that stage of the proceedings would have unduly prejudiced Respondents. There has been ample opportunity for Petitioners to amend their complaint to allege additional or clarifying facts. While liberality in amendment is meant to assure fair opportunity to present claims and defenses, "equal attention should be given to the proposition that there must be an end finally to a particular litigation." *Freeman* v. *Continental Gin Company*, 381 F2d 459, *supra*. An amendment may be untimely and thus prejudicial to the opposing party, even before summary judgment has

been granted as to the counts proposed to be amended. See *Freeman, supra*, 381 F2d 459, 469. Here, Petitioners sought to amend after summary judgment, a ruling on the merits of their allegations. As there must be an end to litigation, and as Petitioners have had repeated opportunities to amend their complaint, Respondents would have been unduly prejudiced by the allowance of yet another amendment at that stage of the proceedings, where the amendment would not raise any new theory or set forth any new facts in support of those theories already dismissed. "A busy district court need not allow itself to be imposed upon by the presentation of theories seriatim." *Freeman* v. *Continental Gin Company, supra*.

The sum of it all is that the Third Amended Complaint had and has no place in the instant lawsuit. Petitioners should rise or fall on their Second Amended Complaint. It is respectfully submitted that Petitioners should fall.

CONCLUSION

Respondents respectfully submit that this appeal should be affirmed for the reasons stated by the District Court or for those reasons raised by Respondents in Section II and III of this brief.

Respectfully submitted,

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